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Contents

Federal Register

Vol. 67, No. 116

Monday, June 17, 2002

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 67, No. 116
Monday, June 17, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 98–127–2]

Rambutan, Longan, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Hawaiian fruits and vegetables regulations to provide alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. This action will facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. We are also consolidating and updating the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make the regulations easier to understand.

DATES: This regulation is effective July 17, 2002. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that exist in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

On July 18, 2001, we published in the **Federal Register** (64 FR 37425–37429, Docket No. 98–127–1) a proposal to amend the regulations by providing alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. We proposed this action because we determined that it would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. In the proposed rule, we also proposed to consolidate and update the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make the regulations easier to understand.

We solicited comments concerning our proposal for 60 days ending September 17, 2001. We received one comment by that date. The comment was from an agricultural scientist. The commenter generally supported the proposed rule and provided additional information for our economic analysis. The commenter also raised a few issues that we have discussed below.

Comment: Whenever inspection for pests is mentioned in the regulations, APHIS should emphasize that only the presence of live (not dead) pests can interrupt a shipment of treated fruits.

Response: Currently, under § 318.13–1, and for the purposes of Part 318 Hawaiian and Territorial Quarantine Notices, plant pests are defined as ''the injurious insects and plant diseases referred to in § 318.13,[1] in any stage of development.'' We believe that this definition implies that only live plant pests should be of concern to inspectors, though inspectors, based on their own judgment, may consider the presence of dead plant pests to be evidence of pest activity that could warrant more detailed inspection of the affected commodity. In any case, only the presence of live plant pests would be grounds for taking quarantine action on a shipment of treated fruits or vegetables.

However, since the current definition for ''plant pests'' does not refer to some pests that may be present in Hawaii, we are revising the definition to reflect the most current usage of the term. For the purposes of 7 CFR part 318, a plant pest will be defined as ''any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles.'' We believe this definition, which is taken from the Plant Protection Act (7 U.S.C. 7701–7772), provides adequate assurance that any plant pest can be subject to quarantine action under the regulations in part 318.

Comment: The hot water treatment protocol for longan states that after treatment, hydrocooling for 20 minutes at 75.2 °F is recommended, though not required, to prevent injury to the fruit from the hot water immersion treatment. Hot water treatment is always injurious to fruit quality, so the protocol should use the term ''reduce'' rather than the term ''prevent.''

Response: We agree with the commenter, and are revising the treatment's hydrocooling recommendation accordingly.

Comment: Recently published data (submitted by the commenter) indicate that the hot water immersion treatment for litchi and longan will also kill the larvae and pupae of moths of the genus *Cryptophlebia,* two species of which attack litchi and longan in Hawaii. A statement to this effect could be added to the final rule.

Response: We had not previously required treatment of longans and litchis for *Crytophlebia* spp. because we are confident that we can intercept such pests via inspection. As we will continue to inspect for the presence of *Cryptophlebia* spp., we do not believe it

[1] Section 318.13 lists the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Bactrocera cucurbitae* Coq.), the oriental fruit fly (*Bactrocera dorsalis* Hendl.), green coffee scale (*Coccus viridis* (Green)), the bean pod borer (*Maruca testulalis* (Geyer)), the bean butterfly (*Lampides boeticus* (L.)), the Asiatic rice borer (*Chilo suppressalis*), the mango weevil (*Sternochetus mangiferae* (F.)), the Chinese rose beetle (*Adoretus sinicus* Burm.), and a cactus borer (*Cactoblastis cactorum* (Berg.)) as pests that exist in Hawaii that are new to or not widely prevalent within the continental United States.

is necessary to refer to *Cryptophlebia* spp. in the final rule with regard to the treatment of longans and litchis. We acknowledge, however, that the ability of the hot water treatment to kill *Cryptophlebia* spp. will contribute to overall quarantine security.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In this document, we are amending the Hawaiian fruits and vegetables regulations to provide for the interstate movement of rambutan, litchi, and longan from Hawaii after the fruit is treated, under certain conditions, for fruit flies. Under this final rule, those fruits will be allowed to move interstate from Hawaii if they are first inspected and then treated for pests using the following types of treatments:

Fruit	Treatment(s)
Rambutan	High temperature forced air or vapor heat.
Litchi	Vapor heat.
Longan	Hot water.

This action will facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Prior to the adoption of this final rule, the above fruits were already allowed to move interstate from Hawaii if treated with irradiation in accordance with the regulations in § 318.13–4f. Litchi could also be moved interstate from Hawaii if treated with hot water in accordance with the Plant Protection and Quarantine Treatment Manual. Longan and litchi are not allowed to be moved into Florida due to the risk of introducing the litchi rust mite into areas in Florida where longan and litchi are commercially grown.

Providing alternative pest treatment methods for rambutan, litchi, and longan fruits from Hawaii is expected to stimulate growth of the industry and provide access to the larger mainland market.

Production of rambutan in Hawaii decreased from 264,300 pounds in 1997 to about 139,200 pounds in 1998. Rambutan farm prices increased from $2.71 per pound to $3.03 per pound during that period. There are approximately 50 farms in Hawaii that produce rambutan, and each of those farms can be considered to be small entities according to Small Business Administration (SBA) criteria (*i.e.,* a producer with less than $750,000 in annual sales).

In 1998, the United States produced approximately 2.3 million pounds of litchi, with Hawaii producing 157,000 pounds of litchi, valued at $309,000, during that same period. There are approximately 75 farms in Hawaii that produce litchi, and each is a small entity according to SBA criteria.

The United States produces approximately 1.4 million pounds of longan (mostly in Florida) annually, with a market value of approximately $767,000. Hawaii produced approximately 17,000 pounds of longan in 1998, and anecdotal evidence suggests that production has increased since 1998, though no data is available to confirm that suspected trend. Regardless, any producers of longan in Hawaii are likely to be small entities according to SBA criteria.

Currently, there are 5 fruit packing plants in Hawaii that have a total of 11 high temperature forced air and vapor heat treatment chambers. Four of those chambers have not been used recently and require recertification. In addition, one packing plant has the capability to treat fruits with irradiation. There is one hot water immersion treatment facility that has recently been built in Hawaii, but it has not been certified by USDA.

Vapor heat and high temperature forced air treatments require between 4 and 6 hours of treatment. The cost of treatment ranges from 0.92 to 2.3 cents per pound (approximately $18.40 to $46.00 per ton with capital construction costs of about $0.9 million to $1.2 million), while irradiation requires about 40 minutes of treatment at a cost of approximately 0.93 to 1.58 cents per pound (approximately $18.60 to $31.60 per ton with capital construction cost of about $2.8 million to $3.8 million for a freestanding facility).

The recently built commercial continuous-feed hot water immersion treatment unit cost $75,000 and can process 500–600 pounds of fruit per hour. It is estimated that using hot water treatment as an alternative would cost, taking into account the opportunity cost of capital, labor cost, and fuel cost, about $13.95 per ton. Unless there is a large volume of fruit available for treatment, the equipment would likely be underutilized. It is unclear whether availability and operation of a hot water treatment facility would have an effect on other types of treatment facilities in Hawaii.

Producers would be able to utilize existing facilities in Hawaii to treat fruits under the conditions specified in this final rule. Adoption of this final rule will likely result in increased revenue for the existing vapor heat and dry heat facilities in Hawaii. Additionally, growers in Hawaii may benefit from the increased opportunity for selling their products in a larger and more diverse market and from potential decreases in the cost of treating fruits. If producers respond by planting and harvesting more acreage of these fruits, both consumers and firms that provide treatment services are likely to benefit.

All of the treatment methods would be more economical for owners of facilities and sellers of fruits if the treatments are applied to larger shipments. Initial investments associated with the treatments considered here would depend on the number, capacity, and complexity of required facilities. Costs per pound of fruit treated can rise dramatically when capital-intensive facilities are operated at less than design capacity. This would happen when the commodity is not shipped year round, or when production decreases dramatically (as in the case of a freeze), or if trade patterns or the regulatory environment changes substantially. The effect of underutilized capital equipment on per-unit treatment costs tends to be greater the more expensive the initial capital investment. For example, a recent study estimated that operating strawberry irradiators at 25 percent of their annual throughput capacity can increase the cost of irradiating strawberries by 212 percent, from $0.034/lb treated (when plant is operated at 100 percent annual capacity) to $0.106/lb treated (when plant is operated at only 25 percent of capacity).

The economic effects of this rule on mainland growers and prices on the mainland are not expected to be significant. However, mainland consumers of fresh rambutan, litchi, and longan could likely benefit from increased seasonal and regional availability and from the increased variety of fresh fruits, as well as from more stable prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR parts 300 and 318 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a) is amended as follows:

a. In paragraph (a)(2), by removing the word ''and''.

b. In paragraph (a)(3), by removing the period and adding the word ''; and'' in its place.

c. By adding a new paragraph (a)(4) to read as follows.

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(4) Treatments T102–d–1, T103–e, T106–c, T106–f, and T106–g, dated February 2002.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 is revised to read as follows:

Authority: U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

4. In § 318.13–1, the definition of *plant pests* is revised to read as follows:

§ 318.13–1 Definitions.

* * * * *

Plant pests. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles.

* * * * *

5. In § 318.13–2, paragraph (b), the entry for Allium spp. is removed and the following entries are added in its place:

§ 318.13–2 Regulated articles.

* * * * *

(b) * * *

Allium spp. (bulb only).
Allium tuberosum.

* * * * *

6. Section 318.13–4b is revised to read as follows:

§ 318.13–4b Administrative instructions; conditions governing the interstate movement from Hawaii of certain fruits for which treatment is required.

(a) *General restrictions.* Fruits listed in this section may only be moved interstate from Hawaii in accordance with this section or in accordance with other applicable sections in this subpart.

(b) *Eligible fruits.* The following fruits may be moved interstate from Hawaii if, prior to interstate movement, they are inspected for plant pests by an inspector and are then treated for fruit flies under the supervision of an inspector with a treatment prescribed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter: Avocados, bell peppers, carambolas, eggplants, Italian squash, litchi, longan, papayas, pineapples (other than smooth cayenne), rambutan, and tomatoes.

(c) *Subsequent handling.* All handling of fruits subsequent to treatment in Hawaii must be carried out under the supervision of an inspector and according to the inspector's instructions.

(d) *Destination restrictions.* Litchi and longan that are moved interstate from Hawaii under this section may not be moved into Florida due to the litchi rust mite (*Eriophyes litchi*). Cartons used to carry such fruits must be stamped: ''Not for movement into or distribution in FL.''

(e) *Costs and charges.* All costs of treatment and any post-treatment safeguards prescribed by an inspector must be borne by the owner of the fruits or the owner's representative. The services of an inspector during regularly assigned hours of duty and at the usual place of duty are furnished by APHIS without charge.

(f) *Department not responsible for damages.* Treatments prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe for use with the fruits listed in paragraph (b) of this section. However, the Department assumes no responsibility for any damage sustained through or in the course of the treatment, or because of safeguards required by an inspector.

§ 318.13–4d [Removed and Reserved]

7. Section 318.13–4d is removed and reserved.

§ 318.13–4e [Removed and Reserved]

8. Section 318.13–4e is removed and reserved.

§ 318.13–4h [Removed and Reserved]

9. Section 318.13–4h is removed and reserved.

Done in Washington, DC, this 10th day of June 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15073 Filed 6–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM219, Special Conditions No. 25–204–SC]

Special Conditions: Israel Aircraft Industries, Ltd. Model 1124/1124A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified by Duncan Aviation. These airplanes, as

modified by Duncan Aviation, will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a dual Collins AHS–3000A Attitude Heading Reference System (AHRS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 6, 2002. Comments must be received on or before July 17, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM219, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM219. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 28, 2002, Duncan Aviation, Inc., P.O. Box 81887, Lincoln, NE 68501, applied for a supplemental type certificate (STC) to modify Israel Aircraft Industries Ltd. Model 1124/1124A airplanes approved under Type Certificate No. A2SW. The Israel Aircraft Industries, Ltd. 1124/1124A airplanes are executive type transports that have two aft mounted turbine engines, a maximum passenger load of 10 passengers, and a maximum operating speed of 360 knots. The modification incorporates the installation of a dual Collins AHS–3000A Attitude Heading Reference System (AHRS). The AHS–3000A is a solid state, strap-down attitude/heading reference system using quartz based inertial sensor technology. Its primary function is to provide measurements of the airplane's pitch, roll, and heading for use by cockpit displays, flight control and management systems, and other avionics equipment. The basic AHS–3000A system consists of a Collins AHC–3000A Attitude/Heading Computer, a Collins FDU–3000 Flux Detector, and a Collins ECU–3000 External Compensation Unit. These advanced systems use electronics to a far greater extent than the original inertial navigation systems and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). This disruption of signals could result in loss of attitude or the display of misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation, Inc. must show that the Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes includes Civil Air Regulations (CAR) 4b, effective December 31, 1953, including amendments through amendment level 4b–11. Other applicable amendments, Federal Aviation Regulations, and special conditions are noted in Type Certificate Data Sheet (TCDS) A2SW.

If the Administrator finds that the applicable airworthiness regulations (that is, CAR 4b or 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes will incorporate a dual Collins AHS–3000A Attitude Heading Reference System, which performs critical functions. Each system consists of a Collins AHC–3000A Attitude/Heading Computer, a Collins

FDU–3000 Flux Detector Unit, and a Collins ECU–3000 External Compensation Unit. Because these advanced systems use electronics to a far greater extent than the original inertial navigation systems, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified to include the new navigation system. These special conditions will require that the new Collins Avionics AHS–3000A Attitude Heading Reference Systems, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHZ–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified by Duncan Aviation, Inc. to include the Collins AHS–3000A Attitude Heading Reference Systems. Should Duncan Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A2SW to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain design features on Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 6, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–15196 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6]

RIN 2120–AA66

Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. Specifically, this action expands the lateral limits of Area C; reduces the lateral limits of Area F; eliminates Area G; and raises the upper limit of the Class B airspace area from 8,000 feet mean sea level (MSL) to 10,000 feet MSL. The FAA is taking this action to enhance safety, reduce the potential for midair collisions, and improve the management of air traffic operations in the CVG terminal area. Further, this effort supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

EFFECTIVE DATE: 0901 UTC, July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the Docket Number shown at the beginning of this rule. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

Also an electronic copy of this document can be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: (202) 512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the Government Printing Office's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future NPRM's or final rules should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 20, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule in the **Federal Register** (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule in the **Federal Register** (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule in the **Federal Register** (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions.

In 1970, a study of terminal airspace areas found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate increasing numbers of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) the increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of Class B airspace areas normally contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area, and at levels appropriate to the containment of operations in the outer areas. Variations of these configurations may be utilized contingent on the terrain, adjacent

regulatory airspace, and factors unique to a specific terminal area.

Public Input

On December 31, 2001, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket No. 00–AWA–6; 66 FR 67632) proposing to modify the Cincinnati/Northern Kentucky International Airport Class B airspace area. The comment period for this NPRM closed on March 1, 2002.

In response to the proposed rule, the FAA received six written comments. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response are summarized below.

Discussion of Comments

The Air Line Pilots Association International (ALPA) wrote in support of the Class B airspace area modifications. All but one of the six commenters supported the lateral boundary modifications.

Five commenters opposed raising the ceiling of the Class B airspace area to 10,000 feet MSL. One commenter said that the higher ceiling would place an unfair burden on those pilots of piston-engine GA aircraft desiring to overfly the Class B airspace area by requiring them to climb to altitudes where supplemental oxygen might be required. This commenter contended the higher ceiling places a ''huge cylindrical wall'' in the way of north/south traffic from the Michigan, Indiana, and Ohio areas headed to Florida and other points south. Another commenter opposed the higher ceiling based on the belief that GA pilots are rarely permitted to transit the CVG Class B airspace area. According to that commenter, it is easier to remain VFR, monitor ATC frequencies for situational awareness, and climb over the top of the Class B airspace area in lieu of being vectored well around the area, which requires additional fuel and time to travel around CVG. Another commenter wrote that the ability to fly over the Class B airspace area should be maintained and suggested that the upper limit of the Class B airspace area could be raised to 8,400 feet with little effect on transient pilots. One commenter contended that the 10,000-foot ceiling would result in a less safe situation because, instead of overflying the airport in an area of little traffic, he would be forced to go around the side of the Class B airspace area where there is considerable traffic approaching the airport. The Aircraft Owners and Pilots Association (AOPA) also opposed the higher ceiling, calling the change unjustified and requesting that the ceiling be retained at the current 8,000 feet MSL. In making its argument, AOPA wrote that Class B airspace should be established only when there is a significant number and mix of controlled and uncontrolled flights within the same airspace. AOPA said that the VFR flight track data presented in the NPRM do not appear to pose a safety problem for CVG traffic between 8,000 feet MSL and 10,000 feet MSL, and that the VFR track survey information lacked enough detail to support a need to raise the ceiling. AOPA questioned the NPRM's discussion that the higher ceiling would allow reduced coordination requirements between adjacent ATC facilities and added that it is unclear how raising the Class B ceiling would eliminate the need for intermediate level offs by aircraft departing CVG. AOPA maintained that the justification for the vertical expansion of the Class B airspace area was based upon an economic benefit for aircraft that depart CVG without having to level off.

The FAA has carefully considered these comments regarding the CVG Class B airspace area ceiling. The FAA does not agree that raising the vertical limit of the airspace will deny access to the Class B airspace area, nor will it place a ''wall'' in the way of north/south traffic transiting the CVG area. When the CVG Class B airspace area was originally established in 1999, the FAA developed suggested VFR flyways for use by those pilots planning VFR flights through or near the CVG terminal area who desire to avoid the Class B airspace. These routes are currently published on the reverse side of the Cincinnati VFR Terminal Area Chart. An ATC clearance is not required to fly these routes. The VFR flyway routes, with minor adjustments, will remain a charted feature of the modified Class B airspace area. FAA representatives from CVG airport traffic control tower (ATCT) meet monthly with users at the Lunken (LUK) and Cincinnati-Blue Ash (ISZ) Airports, which are situated beneath the Class B airspace area, to familiarize pilots with traffic flows in and out of CVG and to solicit feedback on ATC services. At these monthly meetings, FAA representatives also review the process for pilots to transition north/south and east/west through the CVG Class B airspace area, either with or without participation of ATC services, and discuss ATC-recommended altitudes that provide the safest and easiest transitions through the area. Based on feedback from users, pilots, in general, believe that transitioning through the Class B airspace area is not a difficult task. The FAA does not agree with the comment that GA pilots are rarely permitted to transit the CVG Class B airspace area. On visual meteorological condition (VMC) days, approximately 135 aircraft operating on VFR can be expected to transition through the entire CVG terminal area between 3,000 and 10,000 feet. CVG ATCT provides services to approximately 65 percent of these aircraft. Data reviewed since the VFR survey cited in the NPRM has shown that on a typical VMC day, most VFR aircraft transition the terminal area as recommended by CVG ATCT with few VFR aircraft transiting the CVG area between 8,000 feet and 10,000 feet. In addition, raising the ceiling of the CVG Class B airspace area to 10,000 feet MSL will not prohibit VFR aircraft from transiting the Class B airspace area between 8,000 feet and 10,000 feet MSL. VFR pilots will be able to request clearance from ATC to cross the Class B airspace area between those altitudes. ATC can approve such requests subject to traffic.

We agree with AOPA's comment that Class B airspace should be established only when there are significant numbers of, and a mix of controlled and uncontrolled, flights within the same airspace. However, this is but one of several important factors considered. The primary purpose for designating a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations. Additionally, Class B airspace areas are designed to enhance the management of air traffic operations to and from the airports within the area, in addition to aircraft transiting the terminal area. The volume of traffic, number of enplaned passengers, traffic density, and type or nature of operations being conducted, and whether Class B airspace will contribute to the efficiency and safety of operations in the area are all factors that are considered in determining whether to designate Class B airspace.

We do not agree with AOPA's conclusion that the proposed higher ceiling was intended to eliminate the need for ATC to level off departing aircraft, and that the justification for the proposed vertical expansion centers on the economic benefit for aircraft departing without having to level off. The NPRM did not state that the 10,000-foot ceiling would eliminate intermediate level-offs for departing aircraft. Instead, the FAA believes that the higher ceiling decreases the chances that intermediate level offs may be required in some cases. Additionally,

while the FAA believes that some economic benefits may be realized, this will be only an ancillary benefit of the change. The primary reason for the higher ceiling is to enhance safety by affording greater protection to air carrier aircraft during critical stages of flight when arriving or departing CVG. The airspace between 8,000 and 10,000 feet MSL is used on a regular basis by air traffic controllers for the purpose of managing instrument operations to and from CVG. As discussed in the NPRM, Indianapolis Air Route Traffic Control Center (ARTCC) currently delivers aircraft inbound to CVG at 11,000 feet MSL. Once in the terminal area, these CVG arrivals are generally descended to 10,000 feet while CVG departures normally climb up to 8,000 feet or 9,000 feet. Once lateral separation between the arrivals and departures has been established, the departures are issued further climb instructions and handed off to Indianapolis ARTCC. Arriving aircraft generally are not descended until abeam the airport on a downwind leg. With the current 8,000 feet ceiling, arriving aircraft often must fly 30–35 NM above the Class B airspace area, depending on runway in use and direction of arrival into the terminal area. Consequently, both arrival and departure IFR traffic must operate between 8,000 and 10,000 feet MSL in the CVG terminal area without the benefit of Class B airspace protection. The FAA believes that the current 8,000-foot ceiling does not provide adequate regulatory airspace protection required for this high density terminal area. The amount of IFR traffic between 8,000 and 10,000 feet in the terminal area is such that CVG has entered into Letters of Agreement with adjacent ATC facilities to limit IFR overflight traffic between those altitudes. Further, the FAA concludes that raising the ceiling to 10,000 feet will enhance safety for all operators in the CVG terminal area.

One commenter questioned the reduction of the size of the Class B airspace area on the east and west sides, specifically the elimination of Area G and the reduction in size of Area F, stating that the horizontal limits could stay as they are currently published without impacting safety or economics. This commenter suggested that future traffic growth in the CVG area should be considered so that the FAA will not have to adjust this airspace again in the future to compensate for growth. The commenter also stated that the current Class B airspace dimensions are well defined and easy to follow and that, if Area G is eliminated, physical features should be used to describe the new boundary rather than very high frequency omni-directional radio range radials. FAA policy requires that all Class B airspace areas be evaluated biennially to determine if any modifications are required. The proposal to eliminate Area G, and to reduce the lateral limits of Area F on the west side, was the result of such a review. Since the original development of the CVG Class B airspace area, COMAIR Airlines (representing approximately 50 percent of CVG traffic) has begun to operate only jet aircraft into the Cincinnati/Northern Kentucky International Airport. This change, due to jet aircraft having greater climb performance capabilities, has allowed the FAA to modify some procedures that previously had required the use of Area G airspace. Consequently, the FAA determined that the lateral boundaries of the Class B airspace area to the east and west of the airport may be adjusted without adversely affecting safety. The FAA considered traffic growth projections at CVG through the National Airspace Redesign workgroup. These modifications to the CVG Class B airspace area will provide enhanced safety to accommodate increased volume at CVG.

The Rule

This amendment to 14 CFR part 71 modifies the CVG Class B airspace area. Specifically, this action raises the ceiling of the Class B airspace area from 8,000 feet MSL to 10,000 feet MSL; expands the lateral limits of Area C to the north and south of the airport; reconfigures the lateral limits of Area F on the east and west sides of the Class B airspace area; and eliminates Area G. Areas A, B, and E remain unchanged from their existing configurations, except for the new ceiling at 10,000 feet MSL. Area C is expanded to the north and south of the airport to provide additional airspace needed to ensure that the required 1,000 feet vertical separation is maintained while vectoring multiple aircraft for simultaneous ILS approaches. Area D to the north and south of the airport is modified as a result of the expansion of Area C, as described above, thereby reducing the size of the Area D segments located to the north and south of the airport. This action reduces the overall size of Area F by eliminating certain portions of Area F, between 20 NM and 25 NM, located to the west and east of the airport. Area F is also modified to incorporate two small sections of Area G. Except for small segments of airspace in the western-most point and the southern tip of the existing Area G, Area G is eliminated from the Class B airspace area.

These modifications to the CVG Class B airspace area enhance safety by extending Class B airspace protection to a significant volume of aircraft currently operating between 8,000 feet MSL and 10,000 feet MSL in the CVG terminal area. Further, these modifications improve the flow and the management of air traffic operations in the CVG terminal area. The modifications also better accommodate VFR operations providing additional airspace for pilots to circumnavigate the CVG Class B airspace area. Finally, this action supports various efforts to enhance the efficiency and capacity of the National Airspace System, such as the National Airspace Redesign and the Operational Evolution Plan.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, FAA has determined:

(1) This rule has benefits that justify its costs. This rulemaking does not

impose costs sufficient to be considered ''significant'' under the economic standards for significance under Executive Order 12866 or under DOT's Regulatory Policies and Procedures. Due to public interest, however, it is considered significant under the Executive Order and DOT policy. (2) This rule will not have a significant impact on a substantial number of small entities. (3) This rule has no affect on any trade-sensitive activity. (4) This rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This rule will expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G, the portion not incorporated into Area F; and raise the upper limit of the entire Class B airspace area from 8,000 feet MSL to 10,000 feet MSL.

The FAA believes that raising the upper limit of the Class B airspace area from the current 8,000 feet MSL to 10,000 feet MSL will reduce the likelihood of a midair collision in that airspace by enhancing ATC authority and capability to separate and sequence air traffic. Contraction of the CVG Class B airspace, in Areas F and G, will result in a more efficient use of the airspace, and will benefit nonparticipating VFR operations. Thus, the FAA has determined that this final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the minimal cost impact of the rule, the FAA has determined that this final rule will not have significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Conclusion

In view of the minimal or zero cost of compliance of this rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that this rule will be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASO KY B Cincinnati/Northern Kentucky International Airport, KY [REVISED]

Cincinnati/Northern Kentucky International Airport (Primary Airport)
(Lat. 39°02′46″ N., long. 84°39′44″ W.)
Cincinnati VORTAC (CVG)
(Lat. 39°00′57″ N., long. 84°42′12″ W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a radius of 5 miles from the Cincinnati/Northern Kentucky International Airport.

Area B. That airspace extending upward from 2,100 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 5-mile arc of the airport and the Kentucky bank of the Ohio River northeast of the airport; thence northeast along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence clockwise along the 10-mile arc to the Kentucky bank of the Ohio River southwest of the airport; thence north along the Kentucky bank of the Ohio River to the Indiana-Ohio State line (long. 84°49′00″ W.); thence north along the State line to Interstate 275; thence northeast along Interstate 275 to Interstate 74; thence east along Interstate 74 to the CVG VORTAC 040° radial; thence southwest along the CVG VORTAC 040° radial to the 5-mile arc of the airport; thence counterclockwise on the 5-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000

feet MSL within the area bounded by a line beginning at the intersection of Interstate 275 and the Indiana-Ohio State line (long. 84°49′00″ W.); thence north along the Indiana-Ohio State line, to intersect the 20-mile arc of the airport; thence clockwise along the 20-mile arc of the airport to intersect the extended Runway 18L ILS localizer course; then south along the extended Runway 18L ILS localizer course to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 10-mile arc of the airport; thence clockwise on the 10-mile arc to the Kentucky bank of the Ohio River; thence west along the Kentucky bank of the Ohio River to the 5-mile arc of the airport; thence counterclockwise along the 5-mile arc to the CVG VORTAC 040° radial; thence northeast along the CVG VORTAC 040° radial to Interstate 74; thence west along Interstate 74 to Interstate 275; thence west along Interstate 275 to the point of beginning. That airspace beginning at the intersection of the 10-mile arc southeast of the airport and long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to intersect the Runway 36R ILS localizer course; thence south along the Runway 36R ILS localizer course to the 20-mile arc of the airport, thence clockwise along the 20-mile arc to long. 84°49′00″ W.; thence north along long. 84°49′00″ W. to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of lat. 39°09′18″ N. and the 10-mile arc northeast of the airport; thence east to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to lat. 38°56′15″ N.; thence west along lat. 38°56′15″ N. to intersect the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning. That airspace beginning at the intersection of the Kentucky bank of the Ohio River and lat. 38°56′15″ N. southwest of the airport; thence west along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to lat. 39°09′18″ N.; thence east along lat. 39°09′18″ N. to the Indiana-Ohio State line; thence South along the Indiana-Ohio State line to the Kentucky bank of the Ohio River; thence south along the Kentucky bank of the Ohio River to point of beginning. That airspace beginning at the intersection of the 15-mile arc of the airport and the ILS Runway 18L localizer course; thence north along the extended ILS Runway 18L localizer course to the 20-mile arc of the airport; thence clockwise along the 20-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 15-mile arc of the airport; thence counterclockwise along the 15-mile arc to the point of beginning. That airspace beginning at the intersection of the 15-mile arc south of the airport and the ILS Runway 36R localizer course; thence south along the extended ILS Runway 36R localizer to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc to long. 84°30′00″ W.; thence north along long. 84°30′00″ W. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 20-mile arc of the airport and the Indiana-Ohio State line; thence north along the Indiana-Ohio State line to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 20-mile arc of the airport; thence counterclockwise on the 20-mile arc to the point of beginning. That airspace beginning at the intersection of the 20-mile arc of the airport and long. 84°30′00″ W. southeast of the airport; thence south along long. 84°30′00″ W. to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°49′00″ W.; thence north along long. 84°49′00″ W. to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 25-mile arc north of the airport and long. 84°30′00″ W.; thence clockwise along the 25-mile arc of the airport to the CVG VORTAC 056° radial; thence southwest along the CVG VORTAC 056° radial to the 20-mile arc of the airport; thence clockwise along the 20-mile arc of the airport to the CVG VORTAC 116° radial; thence southeast along the CVG VORTAC 116° radial to the 25-mile arc of the airport; thence clockwise along the 25-mile arc of the airport to long. 84°30′00″ W. south of the airport; thence north along long. 84°30′00″ W. to the intersection of the 10-mile arc of the airport and lat. 38°56′15″ N.; thence east along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc of the airport to lat. 39°09′18″ N.; thence west along lat. 39°09′18″ N. to the intersection of the 10-mile arc of the airport and long. 84°30′00″ W.; thence north along long. 84°30′00″ W. to the point of beginning. That airspace beginning at the intersection of the 25-mile arc of the airport and the Indiana-Ohio State line; thence counterclockwise along the 25-mile arc to the CVG VORTAC 297° radial; thence southeast along the CVG VORTAC 297° radial to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc of the airport to the CVG VORTAC 247° radial; thence southwest along the CVG VORTAC 247° radial to the 25-mile arc of the airport; thence counterclockwise along the 25-arc of the airport to long. 84°49′00″ W. south of the airport; thence north along long. 84°49′00″ W. to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to lat. 38°56′15″ N.; thence west along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise on the 15-mile arc of the airport to lat. 39°09′18″ N.; thence east along lat. 39°09′18″ N. to the Indiana-Ohio State line; thence north along the Indiana-Ohio State line to the point of beginning.

Area G. [Revoked]

* * * * *

Issued in Washington, DC, on June 7, 2002.

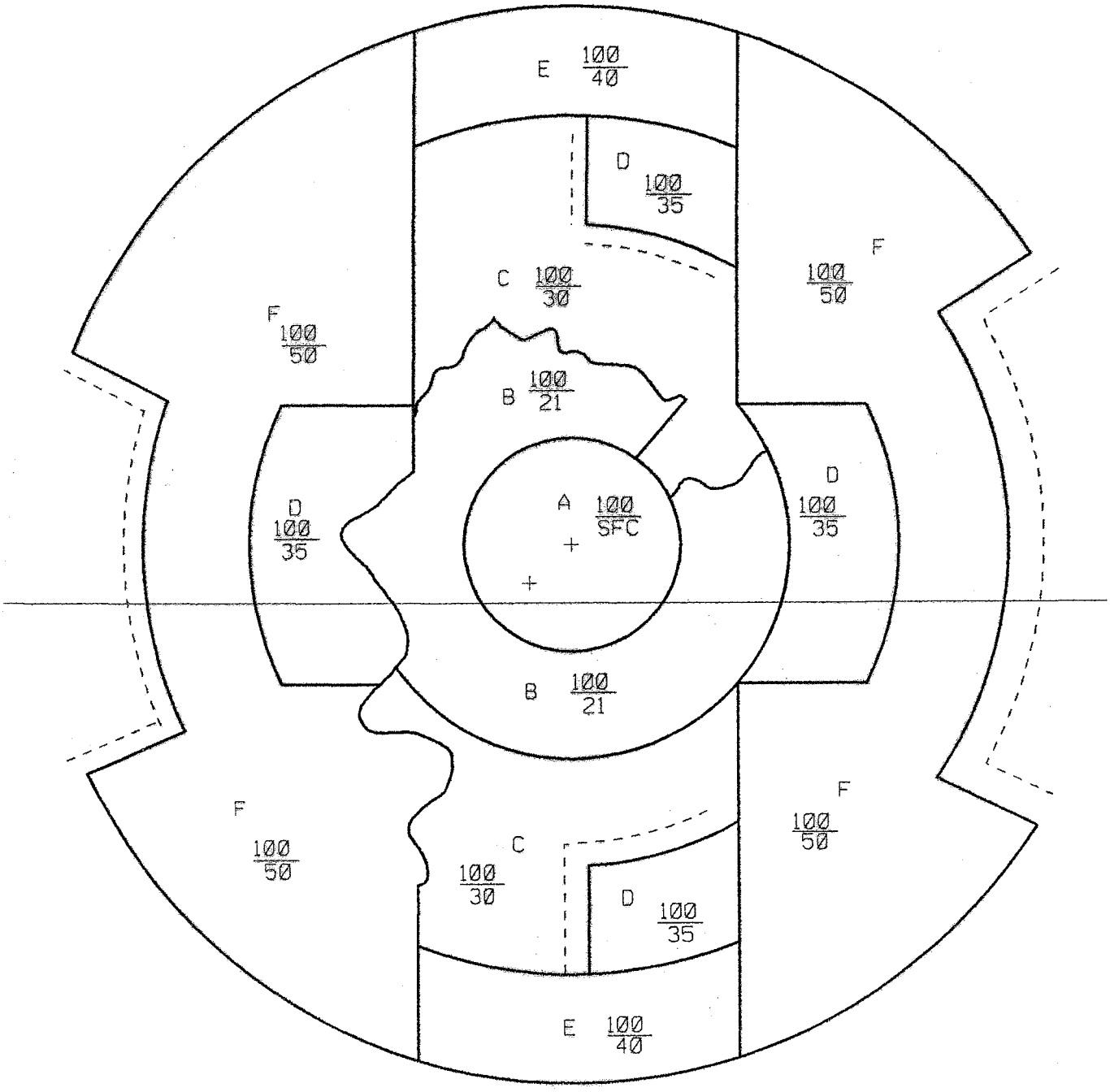
Reginald C. Matthews,

Manager, Airspace and Rules Division.

Appendix—Chart Showing Modification of Class B Airspace at Covington, KY

BILLING CODE 4910–13–P

MODIFICATION OF CLASS B AIRSPACE
Covington, KY
Cincinnati/Northern Kentucky International Airport
Not for Navigation
(Docket No. 00-AWA-6)



[FR Doc. 02–15133 Filed 6–12–02; 9:57 am]
BILLING CODE 4910–13–C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AB89

Registration of Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') published in the **Federal Register** of June 6, 2002, a document concerning final rules relating to the registration of intermediaries. Inadvertently, the Commission cited to an incorrect paragraph designation. This document corrects that error.

EFFECTIVE DATE: Effective on June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission published in the **Federal Register** of June 6, 2002, a document concerning final rules relating to the registration of intermediaries.[1] In that document, the Commission indicated that it was revising paragraph (a)(2)(i) of Rule 3.10. This revision was actually of paragraph (a)(2), because the Commission had previously redesignated paragraph (a)(2)(i) as paragraph (a)(2).[2] This correction makes that change.

In the final rule document appearing on page 38874 in the issue of Thursday, June 6, 2002, make the following corrections: in § 3.10, in the first column, in the amendatory instruction Number 3, second line, ''paragraph (a)(2)(i)'' should read ''paragraph (a)(2)''; and in § 3.10, in the second column, sixth line, ''(2)(i)'' should read ''(2)''.

Dated: June 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–15178 Filed 6–14–02; 8:45 am]
BILLING CODE 6351–01–M

[1] 67 FR 38869 (June 6, 2002).

[2] *See,* 66 FR 53510, 53518 (Oct. 23, 2001).

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA10

Definitions: Electronic, Computer or Other Technologic Aid; Electronic or Electromechanical Facsimile; Game Similar to Bingo

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (Commission) amends three key terms in the Indian Gaming Regulatory Act, ''electronic, computer or other technologic aid,'' ''electronic or electromechanical facsimile,'' and ''game similar to bingo.'' The Commission believes these amendments bring stability and predictability to the important task of game classification.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Penny Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW, Washington, DC 20005. Fax number: 202–632–7066 (not a toll-free number). Telephone number: 202–632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (IGRA or Act), creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate class I gaming exclusively.

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games. 25 U.S.C. 2703(7)(A). Class II gaming, however, does not include any banking card games, electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. 25 U.S.C. 2703(7)(B). Class II gaming thus includes high stakes bingo and pull tabs, as well as non-banking card games such as poker. Tribal governments and the NIGC share regulatory authority over class II gaming without the involvement of state government.

Class III gaming, on the other hand, may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. For a compact to be effective, the Secretary of the Interior must approve the terms of the compact. Class III gaming includes all forms of gaming that are not class I gaming or class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming, such as slot machines and roulette, pari-mutuel wagering, and banking card games, such as blackjack. While such gaming usually requires a tribal-state compact, a tribe may operate class III gaming under gaming procedures issued by the Secretary of the Interior if a state has refused to negotiate in good faith toward a compact. Because of the compact requirement, both the states and tribes possess regulatory authority over class III gaming, with the NIGC retaining an oversight role. Jurisdiction over criminal violations is vested in the United States Department of Justice, which also assists the Commission by conducting civil litigation on its behalf in federal court.

Because of the varying levels of tribal, state, and federal involvement in the three classes of gaming, the proper classification of games is essential. As a legal matter, Congress defined the parameters for game classification when it enacted IGRA. As a practical matter, however, several key terms were not specifically defined, and thus subject to more than one interpretation.

Issues Unresolved in Congressional Definitions

A recurring question as to the proper scope of class II gaming involves the use of electronics and other technology in conjunction with bingo and other class II games. In IGRA, Congress recognized the right of tribes to use ''electronic, computer or other technologic aids'' in connection with class II gaming. Congress provided, however, that ''electronic or electromechanical facsimiles of any game of chance or slot machines of any kind'' constitute class III gaming. Since class III gaming requires an approved tribal-state compact to be lawful (an unattainable plateau for some tribes), definitions articulating the proper distinctions between the two classes are vital to sound execution of the law.

Under a plain language definition of these terms, the distinction between an electronic ''aid'' to a class II game and a class III ''electromechanical facsimile'' of a game of chance is relatively ascertainable. However, the Commission did not apply a plain meaning approach in its early construction of IGRA or in its regulatory definitions, and even if it had, the terms can nonetheless be read to overlap.

The distinction between class II ''electronic aids'' and class III ''electromechanical facsimiles'' is further complicated by the extent to which class II gaming is affected by the federal Gambling Devices Act, 15 U.S.C. 1171–78, more commonly known as ''the Johnson Act.'' The Johnson Act predates IGRA by thirty years and generally prohibits the manufacture or possession of ''gambling devices'' within specific areas of federal jurisdiction, including Indian country. 15 U.S.C. 1175. The term ''gambling device'' is defined very broadly in the Johnson Act. It includes ''slot machines,'' or ''any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling,'' or ''any subassembly or essential part intended to be used in connection with any such machine or mechanical device[.]'' 15 U.S.C. 1171(a)(1–3).

IGRA explicitly creates an exception to the Johnson Act for gaming devices operated under an approved tribal-state compact for class III gaming, 25 U.S.C. 2710(d)(6); however, it does not specify the effect of the Johnson Act on class II gaming. Since the Johnson Act defines gambling devices very broadly, the omission gives rise to more than one interpretation on the question of the reach of the Johnson Act in relation to devices used in conjunction with bingo and other class II gaming. For example, the common bingo ball blower, which has been used widely in bingo games across the country to determine the order in which bingo numbers are called, falls within the definition of gambling device. Although it is virtually inconceivable that Congress intended the Johnson Act to preclude the use of bingo blowers in class II gaming, IGRA does not specifically address the question.

1992 Commission Definitions

Faced with the task of sorting through these issues of construction, the newly established Commission set out to provide guidance to the Indian gaming industry by defining certain key terms in IGRA. A ''notice and comment'' rulemaking initiative commenced soon after the Commission became operational in 1992. The final definitional rule was published on April 9, 1992. 57 FR 12382.

The term ''electronic, computer or other technologic aid'' to class II gaming was defined as ''a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used: (a) Is not a game of chance but merely assists a player or the playing of a game; (b) is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and (c) is operated according to applicable Federal communications law.'' 25 CFR 502.7. ''Electronic or electromechanical facsimile'' was defined by reference to the Johnson Act to mean ''any gambling device as defined in 15 U.S.C. 1171(a)(2) or (3).'' 25 CFR 502.8. Since the IGRA specifies that class II games are to be broadly read to include bingo and other games similar to bingo, the Commission defined the term ''game similar to bingo'' by reference to the definition of bingo elsewhere in the regulations. 25 CFR 502.9.

Incorporation of the Johnson Act in the 1992 Definitions

In 1992, the Commission viewed the relationship between the Johnson Act and IGRA as key to interpreting congressional intent concerning which gaming-related technology is authorized for class II gaming and which technology might cause what would otherwise be considered class II gaming to become class III. In its analysis, the Commission noted three key points. First, the Johnson Act prohibits the use of gambling devices in Indian Country. 15 U.S.C. 1175. Second, the only explicit exception to the Johnson Act in Indian Country is set forth in 25 U.S.C. 2710(d)(6), which indicates that the Johnson Act shall not apply to compacted class III gaming. 57 FR 12382, 12385 (April 9, 1992). Finally, class II gaming under IGRA is permitted for tribes in states where it is permitted for any other person or entity and is not specifically prohibited on Indian lands by Federal law. 25 U.S.C. 2710(b)(1)(A). Relying on language in a Senate Report on IGRA, the Commission interpreted the reference to ''Federal law'' to mean the Johnson Act. Under this interpretation, the Johnson Act applies even in the context of class II gaming. *See* S. Rep. No. 100–446, at 9 (1988).

Under the Commission's interpretation, IGRA required independent compliance with the Johnson Act except where the Indian gaming activity is authorized by a tribal-state compact. This was a reasonable approach in relation to crafting a regulatory definition of ''slot machine of any kind'' because the term is well defined by the Johnson Act and because congressional intent was clear.

In the context of defining electronic or electromechanical facsimile, however, incorporation of the Johnson Act was less satisfactory. The Commission's facsimile definition includes: ''any gambling device'' as defined by sections 1171(a)(2) or (3) of the Johnson Act. 25 CFR 502.8. Because the Johnson Act is so broadly construed, a facsimile thus includes *any* device designed and manufactured for use in connection with gambling, as well as any sub-assembly or essential part intended to be used for such purposes. This definition departs substantially from any plain meaning of the term.

With the benefit of experience and hindsight, it has become increasingly clear that by incorporating the Johnson Act into its ''electronic or electromechanical facsimile'' definition, the Commission defined a key term in an overly broad manner. Worse, use of the definition produces patently nonsensical results in certain circumstances. We again turn to the common bingo ball blower, a device used to randomly generate numbers for bingo games.

Few would argue that Congress intended the Johnson Act to prohibit the use of bingo blowers or other aids in class II gaming, particularly since the plain language of the Act anticipates such use of electronics and technology. Nevertheless, the broad interpretation of ''gambling device'' contained in the Johnson Act clearly sweeps bingo blowers within its ambit.

A chief reason for the Johnson Act's broad construction is that as a criminal statute it is intended to restrict the possession, use, and transportation of gambling devices. The principles of construction used by the courts in interpreting the Johnson Act were designed to ''anticipate the ingeniousness of gambling machine designers.'' *Lion Manufacturing Corp.* v. *Kennedy,* 330 F.2d 833, 836–837 (D.C. Cir. 1964). Accordingly, courts have found the Johnson Act to cover a wide variety of machines. *See, e.g., United States* v. *H.M. Branson Distrib. Co.,* 398 F.2d 929, 933 (6th Cir. 1968) (pinball machines with knock-off meters that can accumulate free games); *United States* v. *Two (2) Quarter Fall Machines,* 767 F.Supp 153, 154 (E.D. Tenn. 1991) (machines where the fall of coins could deliver hanging coins into a pay-off chute); *United States* v. *11 Star-Pack Cigarette Merchandiser Machines,* 248

F.Supp. 933, 934 (E.D. Pa. 1966) (an attachment on a vending machine that could deliver a free pack of cigarettes); *United States* v. *Wilson,* 475 F.2d 108 (9th Cir. 1973) (a machine that sold store coupons and prize tickets in a prearranged order from a preprinted bundle even though the player could see the coupon or ticket he was buying).

The traditional broad construction of the Johnson Act encompasses numerous devices manufactured to assist in the play of class II games that the Commission now believes Congress presumed to constitute acceptable technologic aids. In an oft-quoted passage from the legislative history, a Senate Report accompanying the bill that became IGRA indicated that ''tribes should be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility.'' *See* S. Rep. No. 100–446, at 9 (1988). In other words, the ingenuity of gaming designers, which was designed to be constrained by the Johnson Act, is arguably intended to be given freer rein by IGRA in the context of class II gaming.

Incorporating the Johnson Act definition of gambling device into the Commission's definition of ''electromechanical facsimile'' is illogical in certain other respects as well. A good example is the roulette wheel. As the Department of Justice noted in its comments to our proposal to strike the definition of facsimile, equating ''electromechanical facsimile'' to ''Johnson Act gambling device'' can lead to absurdity. A roulette wheel, for example, clearly meets the definition of a Johnson Act gambling device, but it is neither ''electronic'' nor a ''facsimile.'' In other words, although incorporation of the Johnson Act into the IGRA regulatory definitions seemed, in 1992, to be an expedient method of harmonizing two competing federal statutes, it was imperfect at best and, in the final analysis, created more problems than it solved.

In adopting the definitions, the Commission apparently recognized the problem and sought to sidestep it by including ''bingo blower'' as one of several permissible devices to be used as a technological aid to class II gaming. This strategy resolved the specific problem of the bingo blower, but failed to address the underlying conceptual problem. Consequently, substantial uncertainty remains as to a myriad of other devices that, like the bingo blower, provide electronic or technological assistance to class II gaming, but that nevertheless also meet the expansive definition of electromechanical facsimile by virtue of its incorporation of the Johnson Act. Moreover, this uncertainty has translated into a substantial amount of litigation, much of which has produced results unfavorable to the Commission's interpretation of the interplay between IGRA and the Johnson Act.

Consultation With the Department of Justice

On several occasions during the past ten years, the problems noted above have caused the Commission to informally reconsider the correctness of incorporating the Johnson Act into its definition of electromechanical facsimile. Since enforcement of the Johnson Act is committed to the discretion of the Department of Justice, the Commission and the Department share an interest in the proper resolution of this issue.

Like the Commission, the Justice Department has struggled with these questions of interpretation regarding the applicability of the Johnson Act in relation to Indian gaming. In 1996, the Department's position was that Congress expressly contemplated the use of equipment in class II Indian gaming that would otherwise fall within the Johnson Act. In 2001, however, the Justice Department reevaluated its position, indicating a view that the Johnson Act prohibits any technology that meets its terms, including technological aids to class II gaming.

In the meantime, a series of federal circuit court decisions, discussed more fully below, have informed this Commission's view that its original construction of IGRA and resulting definitional regulations did not properly capture the intent of Congress in relation to the distinction between permissible aids to class II games and impermissible class III facsimiles.

Lack of Judicial Endorsement for 1992 Definitions

In hindsight, and with the guidance of the courts, the inconsistencies in purpose between IGRA and the Johnson Act are more readily apparent. The federal courts, including no less than three United States circuit courts of appeal, have been virtually unanimous in concluding that the Commission's definitions are not useful in distinguishing between technologic aids and facsimiles. Rather than apply the Commission's rules, the courts instead conducted a plain meaning analysis juxtaposed against the language of the statute and the Senate Report. While most simply ignored the Commission's definitions, one court openly criticized the Commission's rule as unhelpful. *Cabazon Band of Mission Indians* v. *National Indian Gaming Commission,* 14 F.3d 633 (D.C. Cir. 1994) (holding that the scope of gaming determination at issue in the case could be made by looking to the statute alone and without examining the Commission's regulatory definitions); *Sycuan Band of Mission Indians* v. *Roache,* 54 F.3d 535, 542 (9th Cir. 1994) (resorting to the dictionary definition of facsimile as ''an exact and detailed copy of something,'' rather than using the regulatory definition); *Diamond Game Enterprises* v. *Reno,* 230 F.3d 365, 369 (D.C. Cir. 2000) (''Boiled down to their essence, the regulations tell us little more than that a class II aid is something that is not a class III facsimile.''). In sum, these courts have implicitly rejected the Commission's definition of ''electromechanical facsimile,'' which incorporates the Johnson Act, and have instead used a plain meaning approach to interpret this key term.

In addition to the lack of deference noted above, two United States circuit courts have reached decisions that can be construed to be at odds with the Commission's definition of facsimile, though at least one of them gave deference to the Commission's findings as to the devices in question. *United States* v. *103 Electronic Gambling Devices,* 223 F.3d 1091, 1095, 1102 (9th Cir. 2000); *United States* v. *162 Megamania Gambling Devices,* 231 F.3d 713 (10th Cir. 2000).

The uncomfortable result is that the Commission cannot faithfully apply its own regulations and reach decisions that conform with the decisions of the courts. Such inconsistency frustrates the Commission's ability to properly discharge its duties under IGRA.

Moreover, the courts' unwelcome reception to the Commission's regulatory definitions of electronic aids and electromechanical facsimile stands in vivid contrast to other definitional regulations promulgated by the Commission. In most circumstances, the Commission's work has garnered substantial judicial deference. *See Shakopee Mdewakanton Sioux Community* v. *Hope,* 16 F.3d 261, 264 (8th Cir. 1994) (recognizing ambiguity in the definition of class II and upholding the NIGC's regulations that provide that keno is a class III game); *162 Megamania Gambling Devices,* 231 F.3d at 719–20 (turning for guidance to the Commission's definition of ''game similar to bingo'' and noting that the regulations are entitled to deference); *103 Electronic Gambling Devices,* 223 F.3d at 1097 (''The NIGC's conception of what counts as bingo under IGRA * * *

is entitled to substantial deference.'') Accordingly, the Commission believes that the courts will be receptive to its efforts to bring greater clarity to these key definitions.

Congressional Criticism of the 1992 Definitions

In addition to the developments in the federal case law, the Commission's authorizing committee, the United States Senate Committee on Indian Affairs, has urged the Commission to reconsider these definitions. In a July 10, 2000, letter to the Commission Chairman, Senators Ben Nighthorse Campbell and Daniel K. Inouye, then Chairman and Vice-Chairman, respectively, of the Committee, urged the Commission to revise its definitions pertaining to class II gaming, saying:

> Since the NIGC first issued its regulations on class II gaming, uncertainty has developed among the Indian tribes, states, and regulatory bodies as to which games are properly classified as class II under the act. This is particularly true where tribes offer class II games that utilize ''technological aids'' as the IGRA expressly permits. We also understand that some of these games fall under the definition of ''gambling devices'' under the Johnson Act (15 U.S.C. 1171 et seq.). The conflict between IGRA and the Johnson Act has resulted in repeated legal clashes between Indian tribes and state and federal law enforcement agencies.
>
> We think that it is clear that the NIGC has the authority to resolve this issue.

In a similar letter dated July 11, 2000, nine congressmen also encouraged the Commission ''to bring some clarity to this issue.''

Reconsideration of the 1992 Definitions

In the decade since 1992, the NIGC has had an opportunity to work extensively with its regulatory definitions and also to develop additional experience in Indian gaming. As the Commission's expertise has evolved, the courts have also been active, providing increasingly clearer guidance on the proper interpretation of the relevant statutes. In light of the courts' apathy or antipathy toward certain NIGC definitions discussed above, and in light of requests among the public, the industry, and Congress, the NIGC has determined that several of its key definitions must be revised.

The Commission recognizes that an agency should move with great care in changing definitions that have been in place for a decade. After much reflection, the Commission revises the definitions in a manner that reaffirms, rather than disrupts, settled industry expectations. Today's Final Rule more properly captures the intent of Congress as to the distinction between permissible class II aids and prohibited class III facsimiles, without compromising Congress' intent to prohibit the play of facsimiles absent an approved tribal-state compact.

Requests for Comments

The Commission first issued a proposed rule for comment on June 22, 2001, proposing to withdraw its definition of electronic or electromechanical facsimile. The vast majority of comments favored the Commission's proposal to revise its definition of electronic or electromechanical facsimile by deleting reference to the Johnson Act. A number of commenters, however, including the Department of Justice, expressed the view that mere removal of this definition would not be sufficient to provide adequate guidance. Furthermore, many also expressed the view that additional revisions were needed for two other related terms: ''electronic, computer or other technological aid'' and ''game similar to bingo.''

After careful consideration, the Commission recognized that the commenters were correct in asserting that the simple removal of the definition would not be sufficient to achieve the desired level of clarity with regard to game classification. Accordingly, the Commission revised its proposed facsimile definition and crafted two new definitions addressing technological aids and games similar to bingo. On March 22, 2002, the Commission published a proposed rule for final comment (67 FR 13296). The comment period, extended to May 6, 2002, resulted in the receipt of fifty-two comments.

Summary of Comments

The vast majority of commenters express strong support for the Commission's proposal to revise its definitional regulation. While differences exist as to recommended language, most support removing reference to the Johnson Act from the facsimile definition and thus from the game classification analysis.

The one common ground of nearly all commenters is a frustration with achieving the right interplay between IGRA and the Johnson Act. Some commenters suggest that *any* machine or device meeting the Johnson Act definition of a gambling device would have to be characterized as class III. This, they assert, would be true even if the machine or device could be fairly characterized as a technologic aid to the play of a class II game. The Commission rejects this comment determining that such an approach renders meaningless the technologic aid language in IGRA, and ignores the analysis of a nearly unanimous judiciary. Taken to its logical extreme, an analysis consistent with this view would produce even greater disharmony in distinguishing aids and facsimiles than exists under the current definitions.

The Commission comes to this conclusion with the benefit of ten years' experience since adoption of the original definition regulations and with the advantage of the views of the federal judiciary on the meaning of the language in IGRA. Reaching this conclusion has not been easy. In part, the confusion can be traced to the Commission's original definition regulations. The Commission now believes that in the infancy of IGRA, its original definition regulations simply had not fully reconciled the language of IGRA with the Johnson Act. The Commission now determines that IGRA does not in fact require an across-the-board treatment of all Johnson Act gambling devices as class III games. Stated differently, ''Congress did not intend the Johnson Act to apply if the game at issue fits within the definition of a class II game, and is played with the use of an electronic aid.'' *U.S.* v. *162 MegaMania Gambling Devices,* 231 F.3d 713, 725 (10th Cir. 2000).

This is best illustrated by considering the bingo blower. The Commission's original regulation listed bingo blowers as class II technologic aids, a categorization that has not been seriously challenged and that was accepted without significant scrutiny. *Cabazon Band of Mission Indians* v. *NIGC.* (DDC 1993) 827 F. Supp. 26 at 31, aff'd 14 F.3d 633 (D.C. Cir. 1994), cert. Den. 512 U.S. 1221 (1994) (''* * *the Johnson Act applies only to slot machines and similar devices (including the pull-tab games here in issue), not to aids to gambling (such as bingo blowers and the like)).'' The identification of bingo blowers as class II technologic aids is also consistent with IGRA's legislative history. (''That section [15 U.S.C. 1175] prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto.'' S.Rep. No.100–446, at 12 (1988).) When employed in gaming, though, bingo blowers are nothing more or less than random number generators.

Random number generation is the creation of numbers for use in games of chance and may occur in a wide variety of ways. Video gambling devices, for example, use computer software to generate numbers at random. Dice, cards, or wheels may also be used.

Significant to the Commission's analysis is the fact that both a bingo blower and a roulette wheel function as random number generators. That is, both produce, on a random basis, the numbers that will determine winners in games of chance. The Johnson Act specifically identifies roulette wheels as an example of a gambling device. 15 U.S.C. 1171(a)(2). Bingo blowers also meet the broad, Johnson Act definition of a gambling device, yet are rightfully classified as technologic aids under IGRA. The physical and operational characteristics of these devices, however, cannot be legally distinguished. The only real distinction between roulette wheels and bingo blowers is the games that they support. Bingo blowers generate numbers for class II games of chance, while roulette wheels generate numbers for class III games of chance. Because of their inconsistent purposes, inclusion of the Johnson Act in a game classification analysis undermines the fundamental principles of IGRA.

There are other such illustrative anomalies among gambling devices that are used as random number generators. Both keno and lotteries are class III games, but the ''rabbit ears'' used in keno and the ping-pong ball blowers often used to select lottery winners bear a striking resemblance, in appearance and function, to bingo blowers. Conversely, it would be fully consistent with IGRA to employ the kind of computerized random number generation used in video gaming machines, rather than a blower, to draw numbers for the play of bingo, particularly in light of the fact that IGRA specifically allows for electronic draws in the play of bingo. 25 U.S.C. 2703(7)(A)(i)(II).

From the Commission's perspective, the Johnson Act has proven remarkably troublesome as a starting point in a game classification analysis under IGRA. As illustrated above, this is due in large part to its fundamentally different purpose. The Johnson Act is intended to determine whether something is a ''gambling device.'' IGRA, on the other hand, is intended to distinguish between classes of games. Within the context of IGRA, there is no question as to ''gambling'' per se—all Indian gaming is ''gambling.'' Accordingly, determining whether the Johnson Act covers a particular device simply does not answer the question relevant to Indian gaming: whether the game is class II or class III.

The appropriate threshold for a game classification analysis under IGRA has to be whether or not the game played utilizing a gambling device is class II. If the device is an aid to the play of a class II game, the game remains class II; if the device meets the definition of a facsimile, the game becomes class III. This analytical framework is fully consistent with that adopted by the three federal circuits that have squarely addressed the issue and determined that the Johnson Act does not prohibit technological aids to class II gaming. *See United States* v. *103 Electronic Gambling Devices*, 223 F.3d 1091, 1102 (9th Cir. 2000) (rejecting the notion that the Johnson Act extends to technological aids to the play of bingo); *Diamond Game Enterprises* v. *Reno,* 230 F.3d 365 (D.C. Cir. 2000) (noting that class II aids permitted by IGRA do not run afoul of the Johnson Act); *U.S.* v. *162 MegaMania Gambling Devices,* 231 F.3d 713 (10th Cir. 2000)(concluding that Congress did not intend the Johnson Act to apply if the game at issue fits within the definition of a class II game, and is played with the use of an electronic aid). *See also United States* v. *Burns,* 725 F. Supp. 116, 124 (N.D.N.Y. 1989) (indicating that IGRA makes the Johnson Act inapplicable to class II gaming and therefore tribes may use ''gambling devices'' in the context of bingo).

Because Congress intended to permit the use of electronic technology in class II gaming (even if the device might otherwise fall within the ambit of the Johnson Act), the important factor in a game classification analysis is whether the technology is assisting a player or the play of a class II game. Accordingly, the Commission's amended definition of electronic, computer or other technologic aid retains its elemental definition in subsection (a). To assist in the analysis under subsection (a), a set of analytical factors (subsection (b)), and specific examples of technologic aids (subsection (c)) have also been included. The Commission believes this modification is responsive to those commenters who were unclear as to how proposed subsections (a) and (b) were intended to interact.

The list of examples contained in the proposed rule received mixed comments. Those opposing the list felt that the approach creates a presumption that other machines or devices unlike those specifically listed could not be allowable aids. Others requested clarification as to whether the list is non-exclusive. The list is intended to assist the public and the industry in interpreting the scope of permissible aids by enumerating examples that have already been deemed lawful. This list is not comprehensive. The Commission is fully aware that other machines or devices not included in the list of examples can satisfy the definition of technologic aid and thus be a permissible form of class II gaming.

One commenter suggests that if it is determined that gambling devices can be used in connection with the play of class II games, IGRA still requires a tribal-state compact for operation of the device. The Commission does not believe that there is textual support for such a proposition in IGRA or that Congress intended the compacting process to be applicable in any way to class II gaming. ''S.555 [IGRA] provides for a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming.'' S.Rep. No. 100–446, at 1 (1988).

Several commenters believe the proposed definition of technologic aid should be expanded to reflect that broadening participation is an important characteristic of an aid. The Commission agrees that this is an important indicator as to whether a machine or device is a technologic aid, but also recognizes that it is not a required element. This factor was therefore added to subsection (b) of the definition and should be viewed as strong indication that the machine or device is a technologic aid.

Several commenters suggest that the requirement that an aid be ''readily distinguishable'' from a facsimile is vague. Some argue that this language could possibly create a third category of devices falling somewhere outside both the definition of aid and facsimile. The Commission agrees that the reference has not proven useful in distinguishing between aids and facsimiles, and has therefore removed the reference.

Others suggest that the language ''[i]s readily distinguishable from the playing of an electronic or electromechanical facsimile of a game of chance'' within the aid definition should be qualified by adding the phrase ''in which a single participant can play the game only with or against the device rather than with or against other players.'' Others suggest that the same language should be utilized to limit the facsimile definition. In crafting these two new definitions, the Commission focused upon several key factors.

First, the Commission finds it particularly significant that IGRA specifically provides for an electronic draw in bingo games. 25 U.S.C. 2703(7)(A)(i)(II). Second, greater freedom with regard to class II gaming was clearly intended by the Congress. (''[T]ribes should be given the opportunity to take advantage of modern methods of conducting class II

games and the language regarding technology is designed to provide maximum flexibility.'' S. Rep. No. 100–446, at 9 (1988).) Reading this information along with the judicial analysis in several key cases, the Commission concludes that in the case of bingo, lotto, and other games similar to bingo, the definition ''electronic or electromechanical facsimile'' should be more narrowly construed. See S.Rep. No.100–446 (1988); *United States* v. *103 Electronic Gambling Devices,* 223 F.3d 1091, 1102 (9th Cir. 2000); *U.S.* v. *162 MegaMania Gambling Devices,* 231 F.3d 713 (10th Cir. 2000).

IGRA permits the play of bingo, lotto, and other games similar to bingo in an electronic or electromechanical format, even a *wholly* electronic format, provided that multiple players are playing with or against each other. These players may be playing at the same facility or via links to players in other facilities. A manual component to the game is not necessary. What IGRA does not allow with regard to bingo, lotto, and other games similar to bingo, is a wholly electronic version of the game that does not broaden participation, but instead permits a player to play alone with or against a machine rather than with or against other players. To ensure maximum clarity, the revised definitions include appropriate language establishing these parameters.

Several commenters suggest that the proposed definitions of aid and facsimile are circular because of their cross referencing. The Commission agrees, but also notes that it is important to state clearly when terms are intended to be mutually exclusive. The Commission revised the definitions to accommodate the concern, yet still address the Commission's view that, as a general rule, an aid and a facsimile are mutually exclusive.

One commenter suggests that the focus of the facsimile definition should be on the device rather than the format of the game. The Commission disagrees. The Commission reviews aids and facsimiles as part of its analysis to classify games. Therefore, the focus of the facsimile definition is properly on the game.

One commenter suggests that the Commission use the term ''resembles'' or ''simulates'' rather than ''replicates.'' The Commission concludes that these terms are not necessarily more precise than the term ''replicates.'' It is also noteworthy that the courts have largely utilized the term ''replicates.'' *See e.g. Cabazon Band of Mission Indians* v. *National Indian Gaming Commission,* 14 F.3d 633, 636 (D.C. Cir. 1994); *United States* v. *162 Megamania Gambling Devices,* 231 F.3d 713, 724 (10th Cir. 2000).

''*Game Similar to Bingo*''

Several commenters suggest that the proposed definition is not useful because it provides a single definition for unrelated types of games. Including pull tabs, lotto, punch boards, tip jars, and instant bingo in the definition was viewed as creating confusion. Still others object to the proposed definition on the grounds that the restrictions are contrary to Congress' definition of ''bingo.'' Upon reflection, the Commission agrees and has made appropriate revisions.

Several commenters suggest that the Commission should not adopt a definition of pull tabs, but allow the definition to evolve on a case-by-case basis. Another commenter noted that the game lotto does not contain a finite deal. Some commenters suggest inserting IGRA's requirement that these games must be played in the same location as bingo. Suitable changes were made in response to these comments.

An overwhelming number of commenters object to the proposed definition requiring the use of paper or other tangible medium. Others assert that the term ''preprinted'' is ambiguous. The majority of commenters feel that these requirements are not consistent with federal case law, in part because they would eliminate the lawfully recognized use of electronic cards. *United States* v. *103 Electronic Gambling Devices,* 223 F.3d 1091 (9th Cir. 2000); *U.S.* v. *162 MegaMania Gambling Devices,* 231 F.3d 713 (10th Cir. 2000). The requirements were also seen to disregard the legislative history of IGRA, which allows tribes maximum flexibility in using modern technology. S. Rep. No. 100–446, at 9 (1988). The Commission agrees that the proposed language was overly broad and inconsistent with both case law and legislative history. These requirements have therefore been removed.

It is particularly noteworthy that the statutory listing of specific games followed by the phrase, ''and other games similar to bingo,'' can be read in two ways. 25 U.S.C. 2703(7)(A)(i)(III). First, it can be interpreted to mean merely that the specified games are similar to bingo. The Commission finds this interpretation unlikely. Alternatively, this language can be interpreted to leave class II open to other games that are bingo-like, but that do not fit the precise statutory definition of bingo. This second reading, that the class was left open to a group of non-specific, bingo-like games, or ''variants'' on the game of bingo, is consistent with legislative history and the holdings of the Courts of Appeal for the Ninth and Tenth Circuits in their analysis of the game Megamania cited above.

The Commission now believes that its 1992 definition of ''game similar to bingo'' is flawed. 25 CFR 502.9. It defies logic to conclude that the Congress intended to require that these other ''similar'' games satisfy the same statutory requirements of bingo. If this were Congress' intent, there would have been no need for the phrase ''and other games similar to bingo.'' These games would not in effect be ''similar'' to bingo; they *would* be bingo.

The definition announced today corrects this flaw by accurately stating that ''other games similar to bingo'' constitute a ''variant'' on the game and do not necessarily meet each of the elements specified in the statutory definition of bingo. The Commission believes that this modification more accurately reflects Congress' intent with regard to games similar to bingo.

Miscellaneous Comments

One commenter suggests that the proposed rule is unconstitutional either because tribes have vested constitutional property rights in gaming or because the rule is vague and ambiguous. The Commission respects tribal rights to conduct gaming. It has assumed responsibility for modifying the regulations to assist tribal governments in the regulation of gaming and to clarify standards to be applied in the classification decisions required of tribes and the Commission.

One commenter suggests that the Commission unduly burdened the tribes by requiring changes to its classification of games and by failing to consult with tribes. Throughout this regulatory process, the Commission made every effort to reflect existing court decisions. Tribes that adhere to the law as interpreted by the courts will not be changing their approach to game classification as a result of these regulations. Furthermore, two extensive comment periods and issuance of a second change to the proposed definitions reflect the efforts of the Commission to consult and coordinate with tribal governments.

Many commenters offered specific language urging adoption by the Commission. The Commission found this language extremely helpful in the revision process and encourages similar comments in the future. The analysis and rationale underlying these proposals were of high analytical quality, particularly in light of the complexities presented by these issues.

Today's revisions reflect in principle the themes common to many of the comments.

Regulatory Matters

Regulatory Flexibility Act

This regulation merely codifies existing Federal court decisions and assures that the Commission will follow such decisions. Therefore, we do not expect the regulation to have a significant impact on the approximately 315 tribal gaming operations nationwide. Furthermore, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act. To the extent that tribal gaming operations may be considered small businesses and therefore small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency and, as such, is not subject to the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

List of Subjects in 25 CFR Part 502

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission amends 25 CFR Part 502 as follows:

PART 502–DEFINITIONS OF THIS CHAPTER

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 et seq.

2. Revise § 502.7 to read as follows:

§ 502.7 Electronic, computer or other technologic aid.

(a) *Electronic, computer or other technologic aid* means any machine or device that:

(1) Assists a player or the playing of a game;

(2) Is not an electronic or electromechanical facsimile; and

(3) Is operated in accordance with applicable Federal communications law.

(b) Electronic, computer or other technologic aids include, but are not limited to, machines or devices that:

(1) Broaden the participation levels in a common game;

(2) Facilitate communication between and among gaming sites; or

(3) Allow a player to play a game with or against other players rather than with or against a machine.

(c) Examples of electronic, computer or other technologic aids include pull tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

3. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile.

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

4. Revise § 502.9 to read as follows:

§ 502.9 Other games similar to bingo.

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

Dated: June 10, 2002.

Elizabeth L. Homer,

Vice Chair.

Teresa E. Poust,

Commissioner.

Note: The following attachment will not appear in the Code of Federal Regulations.

I respectfully dissent from the views of the majority. My reasons are set forth below:

In summary, my vote against changing the definition of facsimile and technological aid reflects my belief, and my agreement with Judge Lamberth of the United States District Court for the District of Columbia, that the definition of facsimile which the Commission chose in its initial rulemaking in 1992 was the only definition possible in order to implement Congress' explicit intent, as expressed in IGRA.

1. Background

The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, and now codified at 25 U.S.C. 2701, *et seq,* created a comprehensive scheme for regulating all gaming on Indian lands. The Act establishes three classes of games—

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I exclusively.

''Class II gaming'' means the game of chance commonly known as bingo, *whether or not electronic, computer, or other technologic aids are used* in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games. 25 U.S.C. 2703(7)(A). Under the Act, the term ''class II gaming'' does not include any banking card games or *electronic or electromechanical facsimiles of any game of chance* or slot machines of any kind. 25 U.S.C. 2703(7)(B). Class II gaming thus includes high stakes bingo and pull-tabs as well as non-banking card games such as poker. Indian tribes and the NIGC share regulatory authority over Class II gaming.

''Class III gaming'' means all forms of gaming that are not class I gaming or class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance,

including most forms of casino-type gaming, such as slot machines and roulette, and banking card games, such as blackjack. A tribe may engage in Class III gaming if it obtains a compact with the state in which the tribe's lands are located.[1] Under a compact, both the states and Indian tribes possess regulatory authority over Class III gaming. The NIGC retains an oversight role. In addition, the United States Department of Justice and United States Attorneys possess exclusive criminal jurisdiction over Class III gaming on Indian lands and also possess certain civil jurisdiction over such gaming.

As a legal matter, Congress defined the parameters for the gaming classifications when it enacted the IGRA. As a practical matter, however, the Congressional definitions were general in nature and specific terms within the broad gaming classifications were not explicitly defined. Soon after becoming operational in 1992, the Commission issued a final rule defining certain terms not defined by Congress and clarifying or restating existing definitions consistent with congressional intent. 57 FR 12382. Included among the definitions promulgated by the Commission were definitions for two terms pivotal to an understanding of the distinction in gaming classifications. The first was a definition for the term ''electronic, computer or other technologic aid'' which was defined as ''a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used—(a) Is not a game of chance but merely assists a player or the playing of a game; (b) is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and (c) is operated according to applicable Federal communications law.'' 25 CFR 502.7. The second was a definition for the term ''electronic or electromechanical facsimile'' which the Commission defined to mean ''any gambling device as defined in 15 U.S.C. 1171(a)(2) or (3)'' (the Johnson Act). 25 CFR 502.8.

The Commission thus defined the term ''electronic or electromechanical facsimile'' by incorporating, in part, the definition for ''gambling device'' from the Gambling Devices Act, 15 U.S.C. 1171, *et seq,* also referred to as the Johnson Act.[2]

2. Change to the Definition Established by the Commission in 1992 Is Not Appropriate.

Linking the definitions for the term ''electronic or electromechanical facsimile'' with the definition for a Johnson Act gambling device, and also indirectly with the definition of what could constitute a ''technological aid'' permitted for class II gaming, was the product of careful analysis by the Commission of Congressional intent behind the enactment of IGRA and the application by the Commission of a bedrock requirement in rulemaking by a Federal agency not to depart from Congressional intent where the intent has been clearly expressed. Consider the comment of Judge Lamberth of the United States District Court for the District of Columbia in his opinion regarding the NIGC's rulemaking:

Under the [Administrative Procedures Act] APA, a court reviewing an agency's legislative rule-making must first examine the statute and determine whether Congress has unambiguously expressed its intent. *Chevron, U.S.A.* v *National Resources Defense Council,* 467 U.S. 837, 842–43, 104 S.Ct. 2778, 2781–82, 81 L.Ed.2d 694 (1984). *If Congress has been unambiguous, neither the agency nor the court may diverge from that intent. Such is the case here.* (Italics supplied.)

Cabazon Band v. *NIGC,* 827 F.Supp 26 (DC 1993).

The concepts supporting the Commission's initial rulemaking are as valid today as they were in 1992 when the first Commission members adopted the definition. As such, I do not consider it to be the prerogative of the Commission simply to set aside the rule. Rule change would be appropriate under either of the following circumstances: (1) The Congress indicates through legislation that the definition should be deleted or revised, thus manifesting a different Congressional intent, or (2) the Federal courts invalidate the current rule. Neither of these circumstances presently exists.

As to the first point, bills to amend the IGRA have been introduced in several sessions of the Congress since IGRA was enacted in 1988. Although the Congress has made minor adjustment to the Act in the intervening years, it has not chosen to amend the Act's basic content or the game classification structure which is a prominent feature of the Act. As to the second point, at least one Federal court has upheld the rule and no court has repudiated the rule.

3. The Current Definition Manifests Congressional Intent

In adopting the definitional regulations, including 25 U.S.C. 507.8, the Commission ''determined that regardless of features, gaming machines that fell within the *scope* of the Johnson Act were class III games.'' 57 FR 12385. In the view of the Commission, the relationship between the Johnson Act and the IGRA was key to interpreting Congress' intent concerning which gaming-related technology is class II and which is class III. In the preamble to the final rule, the foundation for the Commission's view was said to rest on two points: (1) The Johnson Act prohibits the use of gambling devices in Indian Country (15 U.S.C. 1175); and (2) the IGRA does not supersede or repeal the Johnson Act except with respect to class III gaming conducted under a compact negotiated between a state and a tribe. 57 FR 12385.

IGRA mentions the Johnson Act in two places. First, at 25 U.S.C. 2710(d)(6), the IGRA indicates that the Johnson Act will not apply to compacted gaming. Second, at 25 U.S.C. 2710(b)(1)(A), the IGRA indirectly mentions the Johnson Act by indicating that a tribe may conduct class II gaming if the State permits such gaming by any person, organization or entity, and ''such gaming is not otherwise specifically prohibited on Indian lands by Federal law.''

In the Senate Report that accompanied the passage of the IGRA, the Select Committee on Indian Affairs explained the meaning of the phrase ''such gaming is not otherwise prohibited on Indian lands by Federal law'' as referring to ''gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo or lotto.'' S. Rep. No. 446, 100th Cong., 2d Sess. 12 (1988).[3]

The relevance of the Johnson Act to determining the classification of Indian gaming permitted under the IGRA, and consequently the validity of the Commission's choice in 1992 to incorporate the current definition of electronic or electromechanical facsimile, is bolstered by the legislative history of IGRA. In a colloquy that appears in the Congressional Record, Senator Inouye confirmed Senator Reid's understanding that the waiver from the Johnson Act created by IGRA was limited to gaming conducted under tribal-state compacts. In response to a statement of Senator Reid's understanding that the waiver from the Johnson Act is limited to gaming conducted under tribal-state compacts, Senator Inouye states:

Yes the Senator is correct. The bill as reported by the committee would not alter the effect of the Johnson Act except to provide for a wavier of its application in the case of gambling devices operated pursuant to a compact with the State in which the tribe is located. The bill is not intended to amend or otherwise alter the Johnson Act in any way.

134 Cong. Rec. 12650, September 15, 1988.

Thus, the Johnson Act is significant to understanding the distinction Congress intended between class II and class III gaming. The Johnson Act applies except in compacted class III gaming and therefore would apply to class II gaming. The Commission ensures this application in its regulations by use of the definition for ''electronic or electromechanical facsimile'' which incorporates the Johnson Act definition of gambling device. Removing the

[1] For a compact to be effective, the approval of the Secretary of the Interior of the compact terms must be obtained. In the absence of a compact, a tribe may operate class III gaming under gaming procedures issued by the Secretary of the Interior.

[2] The Johnson Act, codified at 15 U.S.C. 1171–1178, contains a definition for ''gambling device'' that includes in pertinent part ''(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or (3) any subassembly or essential part intended to be in connection with such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.''

[3] According to the Commission's analysis of the Senate Report, the language in the report concerning devices used in connection with bingo or lotto does not create an exception to the Johnson Act but characterizes the *scope* of the Johnson Act, which is to say that the language in the Senate Report merely states the Committee's view that the Johnson Act does not prohibit bingo blowers—they are not within its scope.

definition can signal a departure from Congressional intent.

4. Federal Courts Support the Commission's Determination Regarding the Definition

The crucial challenge to the Commission's early rulemaking came shortly after the Commission adopted its final rules. In *Cabazon Band* v. *NIGC,* 827 F.Supp 26 (DC 1993), eight tribes joined in a challenge to several of the Commission's rules including the definition for ''electronic or electromechanical facsimile'' at 25 CFR 502.8. Judge Lamberth observed:

[I]f the definition of facsimiles were less broad than that of gambling device, IGRA would be internally contradictory: technology that—ostensibly—now would be allowed for class II gaming under 25 U.S.C. 2703(7)(A) would be prohibited by the Johnson Act (since the repeal of the Johnson Act is only for class III gaming). Thus, only a definition of facsimile that is equivalent to that of gaming device renders the statute internally consistent and allows both statutes peaceably to coexist.

Plaintiff's main objection to the Commission's definition stems from their perception that the definition of gambling device sweeps within its ambit any device that might be used in gambling. This interpretation of the Johnson Act is incorrect. As several cases have held, Congress has acknowledged, and the Commission has noted in the preamble to its rules, the Johnson Act applies only to slot machines and similar devices (including the pull-tab games here in issue), not to aids to gambling (such as bingo blowers and the like). When the scope of the Johnson Act is properly determined, it is clear that the definition of gambling devices is significantly less broad than plaintiff's fear. Moreover, it is clear that Congress' intent in IGRA is fulfilled only when the IGRA's definition of facsimile adopts the Johnson Act's definition of gambling device.

Cabazon Band v. *NIGC,* 827 F.Supp. at 31. This case represents the only serious court challenge that has been brought against the Commission's rulemaking and its determination of appropriate definitions. On appeal, the plaintiff tribes dropped their challenge to the Commission rules and instead focused only on their request, denied in the District Court, for a declaratory judgment that certain video pull-tab games were class II. In reciting the history of the case in its appellate decision, the United States Court of Appeals for the District of Columbia noted ''Judge Lamberth's cogent opinion rejected each of the Tribe's arguments against these regulations as 'either moot or meritless.''' *Cabazon Band* v. *NIGC,* 14 F.3d 633, 634 (1994). (The Court of Appeals also upheld the ruling of Judge Lamberth that the video pull-tab games were class III.)

5. Conclusion

The Commission's action raises concerns about the separation of powers between an executive branch agency and Congress, and I am not therefore convinced that the rule change is an appropriate action for the Commission. True, as the proponents indicate, courts have found it convenient to use the common dictionary meaning of the term ''facsimile'' in deciding whether a particular video pull-tab game falls within the statutory definition for class II gaming. Also true, but not particularly understandable, the Court of Appeals for the District of Columbia, the same Court that six years earlier found Judge Lamberth's *Cabazon* opinion on the rule ''cogent,'' did indicate that the Commission's rule provided no assistance in interpreting the statute. (*See Diamond Games* v. *Reno,* 230 F.3d 365, 369 (D.C. Cir 2000)). However, that Court did not indicate in any way that the definitional rule varied from the IGRA or from Congressional intent.

It is the role of Congress to write the law and it is this Commission's responsibility faithfully to execute the law that Congress has passed. If the Congress through legislative enactment signals its desire to change the gaming classification structure under the IGRA, with the laudable result of permitting a wider range of class II games, or somehow moves the line between what is a technological aid permitted for the play of class II games and what is an electronic facsimile of a game of chance precluded from being considered class II, then I would be first-in-line to modify the original definition of facsimile. I am concerned though that the Commission's action today represents a revision of the law that Congress has created and improperly encroaches upon the legislative function. For now, therefore, I feel bound to dissent in the Commission's amendment because, according to the only relevant court decision on the matter, the original definition clearly manifests explicit Congressional intent and is the only definition that can do so.

Dated: June 8, 2002.

Montie R. Deer.

[FR Doc. 02–15035 Filed 6–14–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–061]

Drawbridge Operation Regulations; Hatchett Creek (US 41), Gulf Intracoastal Waterway, Venice, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a deviation from the regulations governing the operation of the new Hatchett Creek (US 41) bridge across the Gulf Intracoastal Waterway in Venice, Florida. This deviation allows the drawbridge owner to only open one leaf of the bridge from June 10, 2002 until July 31, 2002 to complete construction of the new bascule leaves.

DATES: This deviation is effective from 6 a.m. on June 10, 2002 until 6 p.m. on July 31, 2002.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–061] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requested that the Coast Guard temporarily allow the Hatchett Creek bridge to only open a single leaf of the bridge from June 10, 2002 until July 31, 2002. This temporary deviation from the existing bridge regulations is necessary to complete construction of the new bascule leaves. The Hatchett Creek (US 41), bridge has a horizontal clearance of 30 feet between the fender and the down span.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to allow the owner to complete construction of the new bascule leaves. Under this deviation, the Hatchett Creek (US 41) bridge need only open a single leaf of the bridge from June 10, 2002 until July 31, 2002.

Dated: June 9, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–15200 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–062]

Drawbridge Operation Regulations; Atlantic Avenue Bridge (SR 806), Atlantic Intracoastal Waterway, Mile 1039.6, Delray Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a

deviation from the regulations governing the operation of the Atlantic Avenue bridge (SR 806), across the Atlantic Intracoastal Waterway, mile 1039.6 in Delray Beach, Florida. This deviation allows the drawbridge to only open a single leaf from 5 a.m. on July 8, 2002 to 11:59 p.m. on July 12, 2002 and from 5 a.m. on July 22, 2002 to 11:59 p.m. on July 26, 2002. This deviation is required by the owner to complete repairs to the bridge.

DATES: This deviation is effective from 5 a.m. on July 8, 2002 to 11:59 p.m. on July 26, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL 33131.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The existing regulations in 33 CFR 117.261(aa) governing the operation of the Atlantic Avenue bridge (SR 806), mile 1039.6, at Delray Beach, Florida allow the draw to open on signal, except that, from November 1 through May 31 from 10 a.m. to 6 pm., Monday through Friday, the draw need open only on the hour, and half hour.

The Florida Department of Transportation requested on June 5, 2002, that the Coast Guard allow single leaf openings from 5 a.m. on July 8, 2002 to 11:59 p.m. on July 12, 2002 and from 5 a.m. on July 22, 2002 to 11:59 p.m. on July 26, 2002 to complete repairs to the bridge spans.

The District Commander granted a deviation from the operating requirements listed in 33 CFR 117.261(aa) to allow the owner to complete repairs to the bridge spans. Under this deviation, the Atlantic Avenue bridge need open only a single leaf from 5 a.m. on July 8, 2002 to 11:59 p.m. on July 12, 2002 and from 5 a.m. on July 22, 2002 to 11:59 p.m. on July 26, 2002.

Dated: June 6, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–15201 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 165

[CGD09–02–035]

RIN 2115–AA97

Safety Zone; Navy Pier, Lake Michigan, Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for fireworks displays that will occur on a regular basis off the Navy Pier during the summer of 2002. The safety zone encompasses a portion of the navigable waters in Chicago Harbor, Lake Michigan. The safety zone is needed to protect vessels and spectators during fireworks shows scheduled for various dates during the summer of 2002.

DATES: This rule is effective from 9 p.m. (local) June 1, 2002 until 11 p.m. (local) on September 1, 2002.

ADDRESSES: The Marine Safety Office, Chicago, Illinois maintains the public docket (CGD09–02–035) for this rule. Documents indicated in this preamble will be available for inspection or copying at the Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, Ill., between 9:30 a.m. and 2 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, U. S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

Both a primary and alternate launch site are being established. In the event of inclement weather, the Coast Guard will notify the public via the Broadcast Notice to Mariners if they are using the alternate launch platform.

Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or his designated on-scene representative. The designated on-scene representative may be contacted on VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C.601–612) that this temporary final rule will not have

a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9 p.m. on June 1, 2002 until 11 p.m. on September 1, 2002, a new temporary § 165.T09–034 is added to read as follows:

§ 165.T09–034 Safety Zone; Navy Pier, Lake Michigan, Chicago Harbor, IL.

(a) *Locations.* (1) *Primary launch site.* All waters of Lake Michigan bounded by the arc of a circle with a 1500-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W. These coordinates are based upon North American Datum 1983.

(2) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters of Lake Michigan bounded by the arc of a circle with a 1500-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W.

(b) *Enforcement period.* This section is effective from 9 p.m. (local) June 1, 2002 until 11 p.m. (local) September 1, 2002. The section will be enforced from 9 p.m. until 11 p.m.; on June 1, June 5, June 8, June 12, June 15, June 19, June 22, June 26 June 29, July 3, July 4, July 6, July 10, July 13, July 17, July 20, July 24, July 31, August 3, August 7, August 10, August 14, August 17, August 21, August 24, August 28, August 31, and September 1, 2002.

(c) *Regulations.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or his designated on-scene representative. Section 165.23 also contains other applicable general requirements.

Dated: June 10, 2002.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 02–15199 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD05–01–071

RIN 2115–AA97

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change of effective period.

SUMMARY: The Coast Guard is revising the effective period for a temporary security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant in Calvert County, MD. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels from entering a well-defined area around Calvert Cliffs nuclear power plant.

DATES: The amendment to § 165.T05–071 (b) in this rule is effective on June 17, 2002. Section 165.T05–071 added at 67 FR 9205, February 28, 2002, effective January 9, 2002, to 5 p.m. June 15, 2002, as amended in this rule is extended in effect to 5 p.m. on September 30, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule or questions on viewing or submitting material to the docket, call LT Charles A. Roskam II, Port Safety and Security, Activities Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland, 21226–1791, telephone number (410) 576–2676.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Calvert Cliffs Nuclear Power Plant. On October 3, 2001, Constellation Nuclear-Calvert Cliffs Nuclear Power Plant requested a limited access area to reduce the potential threat that may be posed by vessels that approach the power plant.

On February 28, 2002, the Coast Guard published a temporary final rule entitled ''Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD,'' in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective to 5 p.m. on June 15, 2002. As a result, the Coast Guard is extending the effective date of the rule to 5 p.m. on September 30, 2002. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. No letters commenting on the present rule have been received from the public.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated the rule, we intended to either allow it to expire on June 15, 2002, or to cancel it if we made permanent changes before that date. If we determine that a permanent rule is warranted, we will follow normal notice and comment rulemaking procedures, and a final rule should be published before September 30, 2002. Continuing the temporary rule in effect while the permanent rule rulemaking is in progress will help to ensure the security of this facility and the safety of the public during that period. Therefore, the Coast Guard finds good cause under 5 U.S.C 553(b)(B) and (d)(3) for why a notice of proposed rulemaking and opportunity for comment is not required and why this rule will be made effective fewer than 30 days after publication in the **Federal Register**.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Vessels may transit around the security zone and may be permitted within the security zone with the approval of the Captain of the Port or his or her designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the office listed under **ADDRESSES.** In your comment, explain why you think it qualified and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This regulation establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46

2. In temporary § 165.T05–071, revise paragraph (d) to read as follows:

§ 165.T05–071 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD.

* * * * *

(d) *Effective period:* This section is effective from 5 p.m. on January 9, 2002 to 5 p.m. on September 30, 2002.

* * * * *

Dated: June 10, 2002.

R.B. Peoples,

Commander, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–15217 Filed 6–13–02; 11:20 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL18

Filipino Veterans Eligible for Hospital Care, Nursing Home Care, and Medical Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA's ''Medical'' regulations to add provisions implementing statutory changes providing that certain Filipino veterans in receipt of disability compensation at the full dollar rate are eligible for hospital care, nursing home care, and medical services in the same manner as a veteran.

DATES: *Effective Date:* June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler at (202) 273–8302, Chief, Policy and Operations, Health Administration Services, Veterans Health Administration, 810 Vermont Ave., NW., Washington, DC 20420, (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: This document amends VA's ''Medical'' regulations in 38 CFR part 17 to add provisions implementing statutory changes made by Public Law 106–377, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 2001. This act amended 38 U.S.C. 1734 to provide that the following Filipino veterans who are citizens of the United States, or aliens lawfully admitted for permanent residence in the United States, and who are in receipt of disability compensation under 38 U.S.C. Chapter 11, subchapter II or IV, are eligible for hospital care, nursing home care, and medical services in the same manner as a veteran:

Filipino veterans who had service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States under the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Command in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States.

On December 27, 2001, VA established regulations setting forth provisions for certain Filipino veterans who are citizens of the United States, or aliens lawfully admitted for permanent residence in the United States, to

receive disability compensation at the full dollar rate (66 FR 66763). A Filipino veteran receiving VA disability compensation at the full dollar rate as set forth in 38 CFR 3.42 would necessarily meet all of the requirements to be eligible for hospital care, nursing home care, and medical services in the same manner as a veteran. Conversely, a Filipino veteran not receiving disability compensation at the full dollar rate as set forth in 38 CFR 3.42, would not meet all of the requirements to be eligible for such care. Accordingly, we have added a new § 17.39 to state that Filipino veterans receiving disability compensation at the full dollar value under § 3.42 are eligible for hospital care, nursing home care, and medical services in the same manner as a veteran.

5 U.S.C. 553

This final rule is published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 553 since it reflects statutory changes and incorporates other provisions already required to be met for eligibility for benefits.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule would have a direct effect only on individuals and would not have any measurable effect on small entities. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007.64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 8, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR chapter I is amended as set forth below.

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. A new § 17.39 is added to read as follows:

§ 17.39 Certain Filipino veterans.

Filipino veterans receiving disability compensation at the full dollar value under § 3.42 of this chapter are eligible for hospital care, nursing home care, and medical services in the same manner as a veteran.

(Authority: 38 U.S.C. 501, 1734)

[FR Doc. 02–15164 Filed 6–14–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR9–242, FRL–7232–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico: Control of Emissions From Existing Hospital, Medical, and Infectious Waste Incinerators

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d)/129 Plan submitted by the Commonwealth of Puerto Rico for the purpose of implementing and enforcing the Emission Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. The plan was submitted to fulfill requirements of the Clean Air Act. The intended effect of this action is to approve a plan required by the Clean Air Act which establishes emission limits for existing HMIWI and provides for the implementation and enforcement of those limits.

EFFECTIVE DATE: This rule will be effective July 17, 2002.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Caribbean Environmental Protection Division, 1492 Ponce De Leon Avenue, Centro Europa Building, Suite 417, Stop 22 Santurce, Puerto Rico 00907–4127

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico

Environmental Protection Agency, Air and Radiation Docket and Information Center ( ), Air Docket ( ), 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3713.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking Today?

EPA is approving the Puerto Rico plan, and the elements therein, as submitted on February 20, 2001, for the control of air emissions from Hospital, Medical, and Infectious Waste Incinerators (HMIWIs). When EPA developed the New Source Performance Standard (NSPS) for HMIWI, it also developed Emission Guidelines (EG) to control air emissions from existing HMIWI. (See 62 FR 48379, September 15, 1997, 40 CFR part 60, subpart Ce (Emission Guidelines and Compliance Times for HMIWIs) and subpart Ec (Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996)). The Puerto Rico Environmental Quality Board (EQB) developed a plan, as required by

sections 111(d) and 129 of the Clean Air Act (CAA), 42 U.S.C. 7411(d) and 7429, to adopt the emission guidelines into its body of regulations, and EPA is acting today to approve it.

II. What Are the Details of EPA's Specific Action?

On February 20, 2001, Puerto Rico submitted a plan for implementing EPA's emission guidelines for existing Hospital, Medical, and Infectious Waste Incinerators. The plan contained several elements including: (1) A demonstration of Puerto Rico's legal authority to implement the section 111(d)/129 HMIWI Plan; (2) identification of a mechanism to enforce the emission guidelines; (3) an inventory of six (6) known designated facilities along with estimates of their air emissions; (4) emission limits that are as protective as the emission guidelines; (5) a final compliance date no later than September 15, 2002; (6) testing, monitoring, inspection, and reporting and recordkeeping requirements for the designated facilities; (7) documentation from the public hearing on the HMIWI plan; and (8) provisions to make progress reports to EPA. EPA proposed approval on February 25, 2002 (67 FR 8496).

III. What Comments Were Received on the Proposed Approval and How Has EPA Responded to Them?

There were no comments received on EPA's proposed approval of the Puerto Rico plan. Therefore, EPA is approving the plan.

IV. Conclusion

For reasons described in this action and in EPA's proposal action, EPA is approving Puerto Rico's section 111(d)/129 HMIWI plan. For further details, the reader is referred to the proposal action and the Technical Support Document.

V. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0363. For additional information concerning these requirements, *See* 40 CFR 60.38e. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

In its February 27, 2002 proposal, EPA indicated that this action may have federalism implications in the event that an HMIWI source is identified in the Commonwealth of Puerto Rico that was not previously identified in the plan. However, EPA investigated this matter further and determined that the Puerto Rico plan applies to ''all affected sources'' regardless of whether it has been identified in the plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must

prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: June 4, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Subpart BBB is amended by adding a new undesignated center heading and § 62.13106 to read as follows:

Control of Air Emissions of Designated Pollutants From Existing Hospital, Medical, and Infectious Waste Incinerators

§ 62.13106 Identification of plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency on February 20, 2001, a ''State Plan for implementation and enforcement of 40 CFR part 60, subpart Ce, Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.

(b) Identification of sources: The plan applies to all applicable existing hospital/medical/infectious waste incinerators for which construction commenced on or before June 20, 1996.

[FR Doc. 02–15192 Filed 6–14–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 01–150; FCC 02–78]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules to govern and streamline review of applications for section 214 of the Communications Act of 1934, as amended (the Act), to transfer control of domestic transmission lines. These rules add predictability, efficiency, and transparency to the Commission's domestic section 214 transfer of control review process and greatly improve the Commission's current domestic section 214 transfer of control procedures. The Report and Order in CC Docket No. 01–150 was published in the **Federal Register** on April 17, 2002 (67 FR 18827). Because the new procedures entail new information collection requirements, they could not become effective until the Commission received approval from the Office of Management and Budget (OMB).

DATES: Sections 63.01, 63.03, and 63.04, published at 67 FR 18827, April 17, 2002, were approved by the OMB on June 4, 2002, and became effective on June 14, 2002.

FOR FURTHER INFORMATION CONTACT: Aaron Goldberger, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at agoldber@fcc.gov

SUPPLEMENTARY INFORMATION: On March 21, 2002, the Commission released a Report and Order in CC Docket No. 01–150 (Order), April 17, 2002, (67 FR 18827) adopting rules to govern and streamline review of applications for section 214 of the Act. Specifically, the Order establishes a thirty day streamlined review process that will presumptively apply to domestic section 214 transfer applications meeting specified criteria, and that will apply on a case-by-case basis to all other domestic section 214 applications. The Order also sets forth the information

that applicants must provide in their domestic section 214 applications, whether filed separately or in combination with an international section 214 application. Moreover, the Order defines pro forma transactions in a manner that is consistent with the definition used by the Commission in other contexts, and harmonizes the treatment of asset acquisitions with the treatment of acquisitions of corporate control. A summary of the Order was published in the **Federal Register**. *See* 67 FR 18827, April 17, 2002. The new rules entail new information collection requirements that required OMB approval. On June 4, 2002, OMB approved the information collection requirements. See OMB No. 3060–0989. Sections 63.01, 63.03 and 63.04, published at 67 FR 18827, April 17, 2002, takes effect on June 14, 2002. This publication satisfies the statement in the April 17, 2000 **Federal Register** notice that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15084 Filed 6–14–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[001206341–2027–02]

RIN 0660–AA14

Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final rule.

SUMMARY: In this document, the National Telecommunications and Information Administration (NTIA) adopts rules governing reimbursement to Federal entities by the private sector as a result of reallocation of frequency spectrum. This rule implements provisions of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA 99) which authorized Federal entities to accept compensation payments when they relocate or modify their frequency use to accommodate non-Federal users of the spectrum. By this action, spectrum that has been identified for reallocation can be provided to the private sector for future commercial wireless service, and the Federal Government will be compensated for the costs incurred in making that reallocated spectrum available.

DATES: These rules become effective July 17, 2002.

ADDRESSES: A complete set of comments filed in response to the Notice of Proposed Rulemaking [1] is available for public inspection at the Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC. The responses can also be viewed electronically at *http://www.ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

1. NTIA is the executive branch agency principally responsible for developing and articulating U.S. domestic and international telecommunications policy. NTIA is the principal advisor to the President on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry. NTIA also manages the Federal Government's use of the radio spectrum.

2. On August 10, 1993, Title VI of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93) was signed into law.[2] OBRA–93 authorized the Federal Communications Commission (FCC or Commission) to use competitive bidding (auctions) for the reassignment and licensing of spectrum frequencies for certain commercial services. OBRA–93 also directed the Secretary of Commerce to transfer at least 200 megahertz (MHz) of spectrum below 5 gigahertz (GHz) from Federal agencies to the FCC for licensing to the private sector. Pursuant to OBRA–93, NTIA identified Federal bands for reallocation totaling 235 MHz from the Federal Government to non-Government use in its February 1995 Spectrum Reallocation Final Report.[3]

3. Title III of the Balanced Budget Act of 1997 (BBA–97) required the Secretary of Commerce to identify an additional 20 MHz below 3 GHz for reallocation to non-Government users.[4] In response to this directive, NTIA issued a Spectrum Reallocation Report in February 1998 which identified the additional bands for reallocation.[5] BBA–97 directed the FCC to auction the 20 MHz by 2002 and the 1710–1755 MHz band identified in the 1995 Spectrum Reallocation Final Report after January 1, 2001.[6] Finally, BBA–97 authorized Federal entities to accept cash or in-kind payment as compensation for costs associated with vacating spectrum transferred from Federal to non-Federal use.

4. In 1998, Congress passed the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA–99).[7] This legislation sought to

[1] *See* Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems, National Telecommunications and Information Administration, Docket No. 001206341–0341–01, *Notice of Proposed Rule Making,* 66 FR 4771 (Jan. 18, 2001) (NPRM).

[2] Pub. L. No. 103–66, 107 Stat. 312 (1993).

[3] *See* National Telecommunications and Information Administration, U.S. Department of Commerce, NTIA Special Publication 95–32, *Spectrum Reallocation Final Report* (Feb. 1995).

[4] Pub. L. No. 105–33, 111 Stat. 251 (1997).

[5] *See* National Telecommunications and Information Administration, U.S. Department of Commerce, NTIA Special Publication 98–36, *Spectrum Reallocation Report* (Feb. 1998).

[6] Pub. L. No. 105–33, Sec. 3002(b), *codified at* 47 U.S.C. 925 note (2001). Of the 20 MHz of spectrum, eight (8) MHz (i.e., 139–140.5 MHz, 141.5–143 MHz and 1385–1390 MHz bands) were subsequently reclaimed by the Federal Government in accordance with the National Defense Authorization Act for Fiscal Year 2000. Pub. L. No. 106–65, 113 Stat. 512, 768 (1999).

[7] Pub. L. No. 105–261, 112 Stat. 1920 (1998)(*amending* section 113(g) of the NTIA Organization Act (codified at 47 U.S.C. 923(g)).

encourage the transfer of electromagnetic spectrum from Federal Government to private use by authorizing mandatory compensation payments for Federal entities when they relocate or modify their frequency use to accommodate non-Federal users of the spectrum.[8] Specifically, the Act requires ''[a]ny person on whose behalf a Federal entity incurs costs'' pursuant to frequency spectrum relocation or modification ''to compensate the Federal entity in advance'' for the entity's modification or relocation expenses.[9] The Act also references various expenses associated with frequency relocation or modification that qualify for reimbursement including ''the costs of any modification, replacement, or re-issuance of equipment, facilities, operating manuals, or regulations incurred by that entity.'' [10] Moreover, the Act requires the Federal entity to notify NTIA prior to an auction [11] of the ''marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees.'' [12]

Discussion

5. The Act directs NTIA and the FCC to ''develop procedures for the implementation of [relocation], which * * * shall include a process for resolving any differences that arise between the Federal Government and commercial licensees regarding estimates of relocation or modification costs.'' [13] On January 18, 2001, NTIA issued a Notice of Proposed Rule Making (NPRM) regarding these procedures. The NPRM sets out proposed rules to implement the process by which Federal entities are reimbursed for marginal costs incurred in relocating or modifying facilities as a result of reallocation. The NPRM raised a number of questions and sought public comment on the reimbursement process. The public comments received in response to the NPRM present a wide range of interests that are summarized and discussed below.

Affected Bands

6. The NPRM identified the following bands that currently qualify for reimbursement: 216–220 MHz; 1432–1435 MHz; 1710–1755 MHz; and 2385–2390 MHz. These bands are Federal Government spectrum that was previously identified by NTIA for transfer to the private sector pursuant to OBRA–93 and BBA–97. The NPRM sought comment on the bands that qualified for reimbursement, and stated that future bands that qualify for reimbursement would be identified via a public notice and request for comment. Few comments were received with respect to the bands that qualify for reimbursement. We note that the Commission recently released its Report and Order regarding the reallocation of three of these bands, as well as an additional Report and Order adopting service and competitive bidding rules for these bands.[14] A discussion of the particular bands that currently qualify for reimbursement is provided below.

a. 216–220 MHz Band

7. Federal assignments within the 216–220 MHz band are eligible for reimbursement for relocation or modification costs pursuant to BBA–97 and NDAA–99.

8. Mobex, an Automated Telecommunications Systems (AMTS) operator, states that it presently operates on a secondary basis to the United States Navy's SPASUR system in the 216.880 MHz to 217.080 MHz band.[15] Mobex maintains that in more than 15 years of operation, it has encountered no difficulty in sharing use of the band with the SPASUR system and does not anticipate any difficulty if it obtains additional AMTS licenses.[16] Mobex states that there may be no other spectrum suitable for the SPASUR purpose. Thus, Mobex submits that if the Navy has no intention of relocating the SPASUR system, the Navy should so inform the Administration so that the 216–220 MHz can be severed from this proceeding.[17] We anticipate that SPASUR will remain in the band at specified locations on a primary basis, and we anticipate that other Federal systems will maintain secondary status in the band and not seek reimbursement costs. As noted in paragraph 6 above, the FCC recently released a Report and Order adopting service and competitive bidding rules for these bands to accommodate new licensees. Accordingly, the 216–220 MHz band will not be severed from this proceeding as Mobex suggests.

b. 1432–1435 MHz Band

9. Federal assignments within the 1432–1435 MHz band are eligible for reimbursement for relocation or modification costs pursuant to BBA–97 and NDAA–99.

c. 1710–1755 MHz Band [18]

10. Federal assignments within this band are eligible for reimbursement costs for relocation or modification pursuant to BBA–97 and NDAA–99. Affected Federal agencies will submit estimated relocation or modification costs to NTIA pursuant to these rules.

11. The Federal Aviation Administration (FAA) asked whether agencies that are located in the 1710–1755 MHz band would be required to relocate by January 2004 if no private entities bid on the particular frequencies.[19] January 2004 is not a statutory driven date. To the extent that no non-Government entities have been licensed in the 1710–1755 MHz band, we see no reason why the Federal entities would be required to relocate by that date. Accordingly, Federal agencies within the 1710–1755 MHz band will submit estimated costs to relocate pursuant to these final rules.

d. 2385–2390 MHz Band

12. Federal assignments within this band are eligible for reimbursement of relocation or modification costs pursuant to BBA–97 and NDAA–99. Affected Federal agencies will submit estimated relocation or modification costs to NTIA pursuant to these rules.

e. Future Bands

13. Future bands that qualify for reimbursement will be identified via a public notice and request for comments.

[8] *See* 47 U.S.C. 923(g)(1)(A) (2001). ''Federal entity'' is defined as ''any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305).'' 47 U.S.C. 923(i).

[9] *See* 47 U.S.C. 923(g)(1)(B).

[10] *See* Id. Sec. 923(g)(1)(A).

[11] Generally, the FCC's auction authority is codified in Section 309(j) of the Communications Act as amended, 47 U.S.C. 309(j).

[12] *See* 47 U.S.C. 923(g)(1)(A).

[13] *See* 47 U.S.C. 923(g)(1)(E).

[14] *See* Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, ET Docket No. 00–221, *Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 368 at ¶¶ 19, 22 (2002); Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427– 1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, *Report and Order*, FCC No. 02–152 (released May 24, 2002).

[15] Mobex Comments at 3.

[16] *Id.*

[17] *Id.*

[18] We note that this band is part of an ongoing proceeding whereby NTIA and the Commission are developing a plan for the assessment of spectrum for advanced wireless services (3G). *See In the Matter of Amendment of the Commission's Rules to Allocate Spectrum Below 3GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems,* ET Docket No. 00–258.

[19] FAA Comments at 1.

Sharing

14. The NPRM sought comment on whether Federal entities should be required to relocate in those cases where sharing is technically possible.[20] Most of the commenters supported the idea of the non-Government licensee sharing with the incumbent Federal entity, under certain conditions. The Industrial Telecommunications Association, Inc. (ITA), for example, stated that sharing, as well as voluntary relocation, would expedite the auction process by reducing uncertainty, and avoiding the costly process of unnecessarily relocating Federal incumbents.[21] ITA further noted that relocation may not be necessary because licensees could deploy systems around incumbent Federal users without overlapping contours.[22] Other commenters, however, contended that certain conditions should accompany any sharing arrangement. For example, some commenters noted that the decision about whether the Federal entity should relocate or be permitted to share should be made by the new licensee as opposed to the Federal entity.[23] Motorola supported the sharing of spectrum provided that it does not hamper the deployment of services.[24] AT&T stated that sharing would be a superior option to full relocation in terms of cost, time and convenience, and might be appropriate where the Government's use is restricted to a small geographic area or an off-use time period.[25] AT&T maintained that a licensee's choice between relocation and sharing, retuning or modification (as discussed below) should govern unless the Government demonstrates that the licensee's choice is impracticable.[26]

15. The Department of Defense (DoD) stated that if sharing is technically possible, the private entity would be required to pay for any modification required by the Federal entity.[27] DoD further maintained that it is the Federal entity that must first determine how to achieve comparability of operations, and that ''permitting'' DoD to remain on a non-interference basis is not likely to be sufficient to achieve comparability.[28] DoD also argued that to leave sharing as a potentially feasible option, no requirement should be established that would serve to limit the possibility of achieving comparability.

16. Commenters also offered suggestions and recommendations with respect to establishing sharing as an option. Motorola stated that clear rules need to be established to ensure that deployed systems are compatible and will not affect non-Government operations or mission critical Government facilities.[29] Motorola further stated that costs required for system modification to support sharing must be provided prior to an auction of the reallocated spectrum so that a new entrant can consider the costs as part of a spectrum acquisition strategy.[30] Securicor commented that NTIA should clarify that relocation of incumbent Federal entities is a right that is at the option of the auction winners.[31] AT&T similarly commented that new licensees should have the ultimate choice among sharing, retuning, or full relocation of the Federal incumbents.[32] ITA recommended that NTIA allow licensees to ''rely upon resources such as frequency advisors to evaluate proposed systems and either: (1) Ensure that there will be no prohibited overlap with incumbent, Governmental entities; or (2) begin a relocation negotiation process with the Federal incumbent licensee.''[33] DoD stated that sharing should be considered on a case-by-case basis, and that NTIA should make the clarification in the final rule that sharing is to be made available only if the incumbent Federal entities believe that it would meet their needs.[34]

17. Although sharing appears to be an option that private sector parties favor, OBRA–93, BBA–97, and NDAA–99 require non-exempt Federal entities to relocate from bands reallocated to non-Government uses in order to exercise their rights to reimbursement. Therefore sharing by non-exempt Federal systems will not be permitted once the requirements of OBRA–93, BBA–97, and NDAA–99 have been met. To the extent that a non-exempt Federal entity decides to remain in a reallocated band, the Federal entity would remain in the band on a non-interference basis and would not be entitled to reimbursement for any modification costs under these rules.

18. We recognize that as a practical matter, however, during relocation of Federal Government stations from these bands, Federal agencies and private sector licensees may find it efficient for both entities to operate in these bands for a period of time. It may take a number of years for the relocation process to be completed in some of the subject bands depending upon the number of Government systems that must be relocated. We anticipate that the negotiation process, addressed below, will provide the new licensee and the Federal Government incumbent with a framework within which to negotiate an efficient transition of facilities. During the transition period, all incumbent Government systems will remain on a primary basis and must be protected by the non-Government licensee.

Equipment/System Modification

19. The NPRM discussed circumstances where radiocommunication systems in certain bands can be modified to tune outside of the reallocated band to the upper or lower portion of the incumbent system's tuning capability. We noted that retuning is oftentimes less expensive to implement, assuming that there is no congestion in the upper or lower portion of the band as a result of the migration and assuming the transmitter-receiver frequency separation can be met. To the extent that a Federal entity is able to retune or modify its equipment in these circumstances, we proposed to limit reimbursement to the costs associated with retuning. AT&T supported our proposed limitation of reimbursement costs for retuning or modification in those situations where it is a technically feasible alternative to relocation.[35] Thus, to the extent that a Federal entity that is required to relocate is able to modify/re-tune its equipment with the result that the modified equipment provides operational capabilities comparable with the original system, reimbursement will be limited to the marginal costs associated with modification/re-tuning.

Landline System and Commercial Services

20. The NPRM sought comment on whether a Federal entity should be entitled to reimbursement of relocation costs if it relocates to a landline communications system or a commercial radio service.[36] Commenters overwhelmingly agreed that agencies should be reimbursed for relocation costs if they choose to relocate to a landline or commercial service. DoD stated that moving to a commercial service or landline system

[20] NPRM at ¶ 13.

[21] ITA Reply Comments at 5.

[22] *Id.* at 4.

[23] AT&T Comments at 3; Securicor Comments at 2.

[24] Motorola Comments at 7.

[25] AT&T Comments at 3.

[26] *Id.* at 4.

[27] DOD Comments at 3.

[28] *Id.* at 3.

[29] Motorola Comments at 7.

[30] *Id.*

[31] Securicor Comments at 2–3.

[32] AT&T Comments at 4.

[33] ITA Reply Comments at 5.

[34] DOD Comments at 3.

[35] AT&T Comments at 3.

[36] NPRM at ¶ 14.

would qualify as ''modification,'' and moving to a commercial radio service would certainly be considered ''relocation to another frequency.''[37]

21. We agree with the commenters and find that Federal entities are entitled to reimbursement of relocation costs if they relocate to landline communications systems or commercial radio systems. For Federal entities that choose to relocate to landline communications systems or commercial radio systems, reimbursement will be limited to the marginal costs associated with such a relocation.

Reimbursement of Relocation Costs

22. Private industry commenters overwhelmingly recommended that auction proceeds be used to pay for expenses incurred by the Federal entities as a result of relocation.[38] Several commenters stated that this process would be more efficient and cost effective, eliminating the need for extensive negotiations, discussions and cost sharing considerations, thus permitting new licensees to rapidly deploy networks.[39] Commenters also stated that using auction proceeds to compensate Federal entities would provide certainty on the part of the Federal entities that they would be fully and timely paid because of the guaranteed source of funds.[40] Likewise, commenters noted that this approach would provide certainty on the part of potential bidders who would be free to value the licenses solely on the basis of the value of unencumbered spectrum, thereby reducing the risks associated with bidding on the spectrum and decreasing the likelihood of lengthy post-auction disputes.[41]

23. Commenters provided other benefits of reimbursing Federal entities from auction revenues. AT&T, for example, stated that reducing the overall financial obligations of potential bidders would increase the number of bidders and thus promote competition.[42] MicroTrax argued that using auction revenues to pay for relocation would encourage participation from smaller firms because they would not face any uncertainty about total spectrum costs and would be able to bid the full amount they judge the spectrum to be worth.[43] Cingular noted that this approach is better because potential and winning bidders would not need information regarding classified or sensitive facilities, and because auction revenues would likely be higher.[44]

24. We appreciate the arguments advanced by commenters on this issue however, as several commenters have acknowledged,[45] existing law requires that new non-Government licensees reimburse the Federal entity for relocation costs and it does not allow for reimbursement through auction proceeds.[46] In fact, PCIA stated that several entities have been actively pursuing legislative relief.[47] Accordingly, in the absence of a statutory change, auction proceeds will not be used to reimburse Federal entities for relocation costs.

Notification of Marginal Costs

25. The NPRM proposes a rule that requires Federal entities to provide NTIA with the marginal costs anticipated to be associated with relocation or modification at least 240 days prior to an FCC auction.[48] Pursuant to the NPRM, NTIA would forward that information to the FCC within 180 days prior to an auction.[49]

26. Mobex stated that the time line proposed in the NPRM is unduly long and would impair the Commission's objective of bringing new, competitive services to the public expeditiously.[50] Mobex further stated that the time periods in the NPRM could prevent an auction from occurring for as much as two years from the present time. Mobex suggested that because all Federal entities can be ''deemed to have notice of the Administration's proposals now, they should be planning now, and NTIA should require the submission of the agencies' marginal cost data 30 days after the effective date of the NTIA order * * * [and] NTIA should then provide that cost information to the FCC within 15 days after receiving it.''[51]

27. DOD noted that the requirement for agencies to notify NTIA of the marginal costs 240 days prior to an auction does not allow Federal entities the ability to provide the most up-to-date and accurate cost data.[52] DOD believes that the rules must reflect the complexity of the processes each Executive branch agency and the FCC must take in order to successfully auction Federal spectrum.[53] DOD requested that NTIA work with the Commission and its companion rules to provide agencies a more reasonable time frame to provide cost data.[54] In response to Mobex's proposal that Federal entities present their cost data to NTIA 30 days after the effective date of the rules, DOD argued that 30 days will be insufficient for DOD to undertake the complex task of developing marginal costs.[55] DOD stated that it is important for costs to be developed as close to the auction date as feasible and that, in some circumstances, identification of replacement spectrum will be a condition precedent for the estimation of marginal costs to relocate.[56]

28. The timeframe established in the NPRM was established to give NTIA a sufficient amount of time to gather pertinent information from the Federal entities and to put that information into a relevant format to forward to the FCC. More importantly, the time frame gives the FCC a reasonable amount of time to provide potential bidders with ''sufficient time to develop business plans, assess market conditions, and evaluate availability of equipment for the relevant services.''[57] Many of the comments received in this proceeding have expressed the importance and necessity of bidders being well informed of potential costs so that they can form bidding strategies. Hence, the time frame proposed is also an attempt to give bidders as much time as possible to consider potential costs associated with bidding on licenses.

29. Mobex argued that the proposed time period established for Federal entities to submit costs could prevent an auction from occurring for as much as two years. It is the auction date that drives the time that Federal entities must submit costs and not the other way around. With respect to DOD's argument that the proposed time-period would not allow the Federal entities to provide

[37] DOD Comments at 4.

[38] AT&T Comments at 12; Motorola Comments at 1; Cingular Comments at 1; PCIA Comments at 2; MicroTrax Reply Comments at 1.

[39] Motorola Comments at 6–7; AT&T Comments at 12.

[40] Motorola Comments at 5–6; AT&T Comments at 12.

[41] Cingular Comments at 2; PCIA Comments at 2.

[42] AT&T Comments at 12.

[43] MicroTrax Comments at 2.

[44] Cingular Comments at 2.

[45] PCIA Comments at 2; Motorola Comments at 6; Cingular Comments at 6.

[46] The statute provides that ''[a]ny person on whose behalf a Federal entity incurs costs...shall compensate the Federal entity in advance for such costs.'' 47 U.S.C. 923(g)(1)(B).

[47] PCIA Comments at 6.

[48] NPRM at ¶ 35.

[49] *Id.*

[50] Mobex Comments at 3.

[51] *Id* at 4.

[52] DOD Comments at 12.

[53] *Id.*

[54] *Id.* at 13.

[55] DOD Reply Comments at 6.

[56] *Id.* The 240-day requirement is based on two assumptions: (1) the FCC has issued an allocation order and service rules with respect to certain bands sufficiently in advance of the auction of such spectrum; and (2) comparable spectrum has been identified in those limited cases in which comparable spectrum must be identified to accommodate DOD in accordance with Pub. L. 106–65, 113 Stat.768 (1999).

[57] *See* 47 U.S.C. 309(j)(3)(E)(ii).

up-to-date cost information, we note that any cost information provided prior to an auction and prior to actual relocation would necessarily not be up-to-date. In fact, DOD noted that costs submitted prior to an auction may have to be modified post-auction.[58] We note also that DOD did not suggest a time prior to an auction that would be suitable or reasonable for it to provide up-to-date estimated cost information. Accordingly, we adopt as final the time frames set forth in the proposed rules.

Cap

30. Mobex asserted that ''[p]ursuant to the Act, NTIA has proposed to establish a Relocation Cost Cap, beyond which a non-Federal licensee would not be required to compensate a Federal user for frequency relocation.'' [59] Mobex supported the establishment of a relocation cap, and a cap on the costs to be imposed on a non-Federal user in the event that the Federal user decides to reclaim the spectrum.[60] Mobex asserted that a cap is necessary to determine whether to participate in competitive bidding and to establish a bidding strategy.[61]

31. Securicor recommended that total relocation costs provided by Federal entities be set as the ceiling in post-auction negotiation and mediation to prevent ''new'' costs from being introduced after the bidders have relied on the cost valuation in the bid calculation.[62] MicroTrax agreed that a cap would give more certainty to potential bidders prior to an auction, and thus more confidence leading them to participate in the auction.[63] AT&T argued that the Federal entity should have no reimbursement rights to cost overruns ten percent or more over the initial pre-auction estimate.[64]

32. DOD stated that it is unable to locate any rule or discussion regarding a relocation cost cap in the proposed rules.[65] DOD further stated that the Act does not authorize a cap on relocation costs or the right to reclaim.[66] DOD maintained that because circumstances change, good faith estimates can be low or high.[67] Finally, DOD stated that there is no suggestion in the statute that estimates cannot be modified post-auction, and thus NTIA has correctly not made such a proposal.[68]

33. We agree with DOD that a relocation cap costs cannot be imposed on the Federal agencies. The statute requires any person on whose behalf a Federal entity incurs costs as a result of reallocation shall compensate the Federal entity in advance for such costs.[69] Nothing in the statute indicates that Congress intended to limit or cap the reimbursement of costs incurred by the Federal entity in relocating or modifying their facilities. As a result, the NPRM neither recommended nor discussed a cap on relocation costs. Moreover, we find AT&T's recommendation to limit cost overruns to ten percent over estimated costs to essentially constitute a cap.

Exempted Federal Facilities

34. The NPRM noted that there were Federal power agencies and other Government agencies that were statutorily exempt from the requirements to relocate.[70] We sought comment on whether these agencies could voluntarily relocate, and, if so, whether they would be subject to the proposed rules or left exclusively to voluntary negotiations. Motorola stated that permitting the operation of exempted operations within certain spectrum bands threatens the viability of the use of these bands by non-Government entities.[71] For example, Motorola argued that the usefulness of the 1710 to 1755 MHz band for third generation wireless services would be severely threatened if exempted Federal operations are permitted to operate in that band.[72] Thus, Motorola recommended relocating these exempted Federal users, and requiring that these users submit potential relocation costs at the same time as other Federal users who are subject to mandatory relocation.[73]

35. By statute, exempted Federal assignments/facilities are not required to relocate, therefore Federal entities operating on these exempted assignments/facilities are not obligated to provide estimated relocation costs. The final rules, however, permit exempted Federal entities to accept reimbursement for relocation costs in cases of voluntary relocation. In cases where exempt Federal entities wish to relocate, they may negotiate the marginal cost to relocate with the new non-Government licensee in the same manner as non-exempt entities.

Marginal Costs

36. The NPRM identified the marginal relocation and modification costs that are reimbursable, and proposed to define ''marginal costs'' as those that would be incurred by a Federal entity to achieve comparable capability of systems relocated to a new frequency assignment or band or otherwise modified.[74] We also stated that marginal costs would include all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expenses, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities.

37. The FAA stated that Federal agencies should be reimbursed for the money spent in developing the estimated costs that the Federal entity must submit to NTIA 240 days in advance of an auction.[75] We note that the definition of marginal costs in the Final rules would permit Federal agencies to recover such costs so long as they could reasonably be attributed to the relocation. Under the current definition of marginal costs, however, Federal agencies would not be permitted to recover costs associated with any estimates prepared as part of a reallocation assessment.

38. DOD noted that the elements that define marginal costs are included in the proposed rule, section 301.110(a), which is not definitional but operational.[76] DOD recommended that these elements be incorporated into the definition of marginal costs found in the proposed ''Definitions'' section 301.20(l). We agree and will modify the rules accordingly.

Comparable Facilities

39. The NPRM does not require a Federal entity to relocate until a comparable facility is available to it for a reasonable time to make adjustments, determine compatibility, and ensure a seamless transition from an existing facility or frequency band(s) to the new or modified facility or frequency band(s).[77] We proposed to define ''comparable facility'' to mean that the replacement facility restores the operational capabilities of the original facility to an equal or superior level. We

[58] DOD Comments at 10.
[59] Mobex Comments at 4.
[60] *Id.*
[61] *Id.* at 4–5.
[62] Securicor Comments at 3.
[63] MicroTrax Comments at 2.
[64] AT&T Comments at 14.
[65] DOD Reply Comments at 3.
[66] *Id.* at 4.
[67] *Id.*
[68] *Id.*
[69] 47 U.S.C. 923(g)(1)(B).
[70] NPRM at ¶¶ 26–27.
[71] Motorola Comments at 9.
[72] *Id.;* Motorola Reply Comments at 5.
[73] Motorola Comments at 10.
[74] NPRM at ¶ 33.
[75] FAA Comments at 1.
[76] DOD Comments at 9.
[77] NPRM at ¶ 13.

also proposed to use four basic factors to determine comparability of replacement facility: communications throughput, system reliability, operating costs, and operational capability.[78] We noted in the NPRM that these four factors may not be appropriate measures for all Federal Government stations required to relocate, and noted that radar systems, in particular, may require other measurements.[79]

40. We further proposed to define the four factors to determine comparability. ''Communications throughput'' is defined as the amount of information transferred within the system for a given amount of time. For digital systems, communications throughput is measured in bits per second (bps); for analog systems, the communications throughput is measured by the number of voice, video or data channels. ''System reliability'' is defined in the NPRM as the percentage of time information is accurately transferred within a system. The reliability of a system is a function of equipment failures and the availability of the frequency channel given the propagation characteristics and equipment sensitivity. System reliability also includes the ability of a radio-communications station to perform required functions under stated conditions for a stated period of time. System reliability may involve three distinct concepts: attaining a specified level of performance; the probability of achieving that level; and maintaining that level for a specified time. For digital systems, this would be measured by the percentage of time the bit error rate (BER) exceeds a desired value; for analog transmissions, this would be measured by the percentage of time the receiver carrier-to-noise ratio exceeds the receiver threshold. We noted in the NPRM that, for many DOD systems, performance is defined by sophisticated system specifications as related to specific mission requirements. In measuring/assessing DOD systems, these specific system specifications must be used. ''Operating costs'' is defined as the costs to operate and maintain the Federal entity's replacement system. New licensees would compensate Federal entities for any increased recurring costs associated with the replacement facilities for five years after relocation. ''Operational capability'' is defined as the measure of a system's ability to perform its validated functions within doctrinal requirements, including service, joint service, and allied interoperability requirements with related systems.

41. Securicor noted that the totality of costs proposed are, in general, consistent with the notion of comparable facilities.[80] Securicor expressed concern, however, that the NPRM could be interpreted to provide better facilities than those the Federal entities currently use and that relocation should simply put them in a comparable place. Thus, Securicor argued, the Federal entities should not have increased value in their facilities as a result of relocation. We believe that Securicor's concern was addressed in the NPRM. We proposed that marginal costs include costs related to the need to achieve comparable capability when replacing, modifying or reisssuing equipment in order to relocate when the systems that must be procured or developed have increased functionality due to technological growth. Marginal costs would not include costs related to optional increased functionality that is independent of the need to achieve comparable capability.[81]

42. The FAA stated that Federal agencies should be reimbursed for operating costs for a minimum of five years, with costs for the years thereafter subject to negotiation between the parties.[82] The FAA believes that a five-year limit may not fully reimburse Federal entities for the costs of relocation.[83] We believe that the parties are free to negotiate on any aspect of relocation, including operating costs. We will not, however, dictate the terms of negotiations between the parties. We believe that five years is a sufficient amount of time for a licensee to compensate a Federal agency for increased recurring costs as described herein. To the extent that the parties wish to extend that period, it may be addressed in the negotiation/mediation period as described herein, but it will not be a mandatory requirement of these rules.

Cost Sharing

43. In the NPRM, we proposed to adopt a cost-sharing plan in those situations where the requirement to reimburse a Federal entity could disproportionately fall upon one licensee or a small number of licensees. Such a cost-sharing plan would also ensure that a Federal entity is compensated in those circumstances where a portion of the spectrum is not licensed or acquired by any particular licensee. As part of this proposal, we sought comment on the appropriate entity to serve as a clearinghouse to administer a cost-sharing plan.

44. The commenters were supportive of the proposal for a cost-sharing plan and recommended that NTIA adopt an industry-run clearinghouse similar to the one adopted by the Commission in the relocation of microwave incumbents.[84] Specifically, PCIA and ITA recommended that NTIA follow the Commission's example and request interested parties to submit business plans with certain minimum criteria including financial data, timing, accounting methods, confidentiality, neutrality and dispute resolution.[85] PCIA noted that it has prior and continuing experience as a Commission-certified cost-sharing clearinghouse and has recommendations for selecting a qualified clearinghouse.[86] PCIA also offered that it would be fully qualified to serve as a cost-sharing clearinghouse in this matter and relayed its experience in providing clearinghouse functions for the relocation of fixed microwave licensees.[87] AT&T suggested that although the cost-sharing rules in the microwave relocation process have generally worked well, more detailed guidance regarding problem areas and some modification to the rules would speed relocation, increase the fairness and efficiency of reimbursement, and reduce conflict.[88] AT&T also stated that any clearinghouse should be funded by auction proceeds throughout the life cycle of the clearinghouse, which could last beyond the sunset date.[89]

45. DOD did not take a position on any particular plan with respect to a cost-sharing plan, but states that it will work with the private sector to address this complex issue.[90] DOD provided examples of the complexity of its systems and the possible difficulties that would burden one successful bidder to cover the full cost of relocation.[91] DOD believes that it would be helpful to establish a framework whereby each Federal agency could request that all licensees of frequency assignments affecting a Federal agency participate in a single negotiation process.[92] DOD warned that relocation

[78] *Id.* at ¶ 16.

[79] *Id.* at ¶ 21.

[80] Securicor Comments at 4.

[81] NPRM at ¶33.

[82] FAA Comments at 2.

[83] *Id.*

[84] PCIA Comments at 8; AT&T Comments at 12–14; Securicor Comments at 6–7; ITA Comments at 6.

[85] PCIA Commenta at 8–9; ITA Comments at 6.

[86] PCIA Comments at 7.

[87] *Id.*

[88] AT&T Comments at 12–13.

[89] *Id.* at 14.

[90] DOD Comments at 8.

[91] *Id.*

[92] *Id.* at 10–11.

implementation will not be easy and that successful bidders may need to compensate DOD for multiple systems that are likely to be geographically dispersed throughout the world.[93] Moreover, DOD stated that technical solutions to achieve comparability are likely to be different for different systems.[94]

46. We agree with commenters that a cost-sharing plan may be appropriate, in certain circumstances. At the present time, however, we decline to adopt rules to establish such a plan. Instead, we intend, in the near future through a further notice of proposed rulemaking, to develop a cost-sharing plan and seek proposals for a clearinghouse or some other mechanism for administering a cost-sharing plan. At that time, we would make any modifications to our reimbursement rules that are necessary to implement such a cost-sharing plan. The absence of a cost-sharing plan does not adversely affect the scheduled auction of the 2385–2390 MHz band because the FCC has adopted a nationwide licensing plan for that band. However, we recognize that addressing the cost-sharing question would be necessary prior to the auction of bands that are licensed in smaller geographic areas or multiple spectrum bands.

Information Provided to Potential Bidders

47. The NPRM identifies the type of information that NTIA proposes to provide the FCC regarding unclassified, classified and sensitive Government assignments.[95] Commenters generally argued that more information was needed and that the information proposed was not specific. AT&T submits that the proposed rules do not recognize the potential bidders' need for specific information prior to an auction, and that further disclosure of specific information is essential so that bidders can formulate bidding strategies that take into account likely reimbursement costs or whether to participate in the auction at all.[96] AT&T further states that a lack of necessary information may have the effect of luring bidders into auctions that they otherwise might have not entered, had they fully realized the costs of relocation.[97] Such uninformed participation in the auction could lead to bankruptcy or a default on the awarded licenses.[98]

48. Motorola and PCIA noted that Government use of spectrum is inherently different from non-Government use and, as such, non-Government users have limited experience with the systems and face difficulty ascertaining relocation costs for Government equipments.[99] Thus, Motorola argued, it is difficult for non-Government licensees to negotiate in a meaningful way to determine relocation costs after an auction.[100] Motorola recommended that OMB and NTIA, working in conjunction with the Commission, would be in the best position to work with Government users to accurately determine relocation costs prior to an auction.[101] PCIA likewise argued that NTIA should develop procedures that provide final technical cost information to be made available to auction participants well in advance of the auction.[102] PCIA argued that for the relocation/reimbursement process to be effective, the pre-auction cost estimate must be sufficiently definitive.[103]

49. Securicor stated that potential bidders should be informed about whether the incumbent facilities can be relocated on a single, local or regional basis, or whether an entire system can be relocated.[104] PCIA noted that information provided should be sufficiently complete to permit bidders to assess relative relocation costs of spectrum blocks within each geographic area.[105]

a. Unclassified Assignments

50. With respect to unclassified Government assignments, the NPRM provided the following list of information that we propose to provide to the FCC prior to an auction of the affected bands:[106]

(1) List of Government facilities;

(2) Government agency operating each facility;

(3) Location of each facility;

(4) General type of operation and equipments (e.g. fixed microwave tactical mobile radio, etc.);

(5) Whether the facility can be retuned, modified, or must be relocated;

(6) Estimated marginal cost of retuning, modification, or relocation;

(7) Whether the facility overlaps to one or more license areas or spectrum blocks; and

(8) Total estimated costs for all assignments.

51. Commenters maintained that the proposed rules for the release of information regarding unclassified facilities is too broadly defined and more details should be provided. They argued that our proposal to provide information regarding ''location of each facility'' does not clarify what data would fall within that disclosure requirement, e.g., the general geographical area, the licensed area, specific geographical coordinates such as latitude or longitude, or other information.[107] As an example, AT&T stated that when a microwave or similar facility is being relocated, a potential bidder would need to know, at a minimum, the number of microwave paths for the applicable license area that would need to be relocated.[108] Moreover, AT&T and Securicor maintained that bidders need more detailed information regarding the type, amount, condition and functions of the current equipment being replaced.[109] Finally, AT&T submitted that a simple ''yes or no'' regarding whether equipment can be retuned is insufficient.[110] According to AT&T, the bidder would need detailed information regarding the agency's analysis in order to determine if the agency's plan is viable or cost-efficient, or whether the bidder should propose a superior plan of its own.[111] AT&T stated that ''NTIA's anemic disclosure requirements in the unclassified context would hinder the ability of bidders to evaluate the true costs of their participation in the auction while serving no compelling countervailing purpose such as the protection of important national security information.''[112]

52. DOD maintained that NTIA's proposed rules regarding the release of information for unclassified assignments are adequate.[113] DOD argued that its systems are unique and a general mandate of more information will not be helpful.[114] Thus, DOD stated that it will attempt to present information relating to its systems in a meaningful fashion to bidders, and feels it can do more to reach that result on a case-by-case basis.[115] DOD maintained that information regarding whether a facility can be retuned, modified or relocated is an operational decision that can only be made by the Federal entity

[93] *Id.* at 11.
[94] *Id.*
[95] NPRM at ¶¶ 42–46.
[96] AT&T Comments at 7.
[97] *Id.* at 10–11.
[98] *Id.* at 11.
[99] Motorola Comments at 4; PCIA Comments at 6.
[100] Motorola Comments at 4.
[101] *Id.*
[102] PCIA Comments at 2.
[103] *Id.* at 7.
[104] Securicor Comments at 5.
[105] PCIA Comments at 7.
[106] NPRM at ¶ 42.
[107] AT&T Comments at 7; Cingular Comments at 6; *see also* Motorola Reply Comments at 2.
[108] AT&T Comments at 8.
[109] *Id.*; Securicor Comments at 5.
[110] AT&T Comments at 8.
[111] Id.; *see also* MicroTrax Comments at 2.
[112] AT&T Comments at 9.
[113] DOD Reply Comments at 3.
[114] *Id.*
[115] *Id.*

before it can estimate its marginal costs.[116] DOD further stated that the Federal entity cannot provide information as to whether the facility overlaps one or more licensed areas or spectrum blocks and notes that, while it would know that a nationwide system would overlap licensed areas, it would not be able to make that determination for systems serving smaller areas.[117] DOD stated that it would provide its best estimate of marginal costs taking into account the solution it deems appropriate (*e.g.,* retuning, modification, relocation) on a pre-auction basis.[118] This estimate, DOD maintained, may not include all relocation costs incurred, and may have to be modified post-auction.[119] DOD noted that neither the licensee nor the Federal entity can know until after negotiation if, for example, ''in kind'' reimbursement is possible.[120] Thus, DOD maintained that it may not be possible for a Federal entity to provide all relocation costs that would be included in a petition for relocation on a pre-auction basis to NTIA.[121]

53. The comments here appear to be two-fold: (1) Commenters want a total and final cost for relocation prior to the auction or; (2) commenters want a validation of the Federal entities' cost estimates. The statute *only* requires that potential bidders be notified of the *estimated* relocation or modification costs prior to an auction.[122] Despite this sole requirement, we proposed to provide the estimated cost of relocation, retuning or modification as well as other information related to the Government facility. We understand the commenters' desire for certainty in the actual costs associated with acquiring a license at an auction, but it is unlikely that a Federal entity, prior to an auction, would be able to state unequivocally its total costs to relocate at that time. Congress apparently recognized this difficulty when it required Federal users to submit *estimated* costs. We encourage the Federal entities to put forth their best estimates, and leave the parties to negotiation and mediation in order to come to an agreement on the actual costs. Commenters also listed additional information that they needed, but gave no compelling reasons for requiring that information. Costs should be the only information that potential bidders require to form a bidding strategy. To the extent that an agency provides a cost estimate, the only reason that a potential bidder would need more information (*e.g.,* age, condition, type of equipment) would be to validate or challenge the Federal agency's cost estimate. We believe that the parties will have ample opportunity during post-auction negotiations to discuss estimated and actual costs to relocate, retune, or modify.

54. Accordingly, the final rule reflects the list of information contained in the NPRM regarding unclassified Federal assignments with one exception. NTIA will not be able to provide the FCC with information as to whether the facility overlaps into one or more license areas (no.7, para. 50). The proposed licensed area for an auction is determined by the FCC, and without prior knowledge of the licensing scheme to be used in a particular auction, NTIA is not able to make a determination of overlapping facilities. The FCC, however, may be able to make this determination based on other information provided by NTIA, particularly the location of each facility (no. 3, para. 50).

b. Classified and Sensitive Assignments

55. The NPRM took a different approach with respect to the treatment of classified Government facilities and sensitive assignments. We proposed that the information that would ultimately be provided to bidders with respect to classified facilities would be a single, consolidated and unclassified figure for the cost of relocating, retuning or modifying.[123] This information would be provided to the bidder with the following condition: to the extent that it is consistent with national security considerations, this figure would be broken down by geographical location and spectrum block.[124] After the auction, the winner would be able to apply for a facility clearance pursuant to the National Industrial Security Program Operating Manual and related individual security clearances.[125] With respect to sensitive assignments, we proposed to provide information in the same manner as classified assignments, except that following the auction, we proposed that the Government agency release the sensitive information to the winning bidder pursuant to a non-disclosure agreement.

56. Cingular stated that under the proposal for sensitive and classified information, potential bidders may lack crucial information concerning the relocation costs associated with a given band of spectrum.[126] Thus, Cingular argued, the risk posed by acquiring encumbered spectrum with unknown liabilities could serve to depress the prices bidders are willing to pay for licences.[127] Moreover, Cingular maintained that such a procedure could exacerbate disputes between Federal incumbents and winning bidders insofar as winning bidders are saddled with a price tag that is significantly higher than what was anticipated.[128] Cingular warned that endless litigation and delay would likely result as licensees attempt to verify relocation expenses.[129]

57. AT&T stated that NTIA's proposal with respect to the release of classified information would place bidders in the untenable position of ''relying entirely on an unverifiable estimate of costs created by a unknown methodology by a financially-interested Government entity with no real-world cost pressures informing its calculation.''[130] AT&T maintained that far less restrictive methods are available, such as disclosing essential bidding information to company representatives who have the proper security clearances.[131] AT&T also suggested that a neutral panel or an independent consultant with the proper security clearances could review the submitted information.[132]

58. Mobex supported NTIA's proposal for dealing with classified and sensitive Government assignments because it would provide the Government with the necessary security while providing non-Government licensees with sufficient information to conduct business in a reasonable manner.[133]

59. DOD maintained that the process set forth for releasable classified systems reflect the requirements of Executive Order 12958 [134] and related Federal law and regulations regarding the release of or access to classified information.[135] DOD stated that the proposal requiring successful bidders to apply for a security clearance to gain access to classified material as necessary to reach resolution of reimbursement costs, strikes a reasonable balance between national security interests and the bidder's commercial interests.[136]

60. We believe that the proposed rule regarding classified assignments strikes

[116] DOD Comments at 13.
[117] *Id.* at 13–14.
[118] *Id.* at 14.
[119] *Id.*
[120] *Id.* at 15.
[121] *Id.*
[122] 47 U.S.C. 923(g)(1)(A).
[123] NPRM at ¶ 44.
[124] *Id.*
[125] *Id.*
[126] Cingular Comments at 4.
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] AT&T Comments at 10.
[131] *Id.*
[132] *Id.*
[133] Mobex Comments at 5.
[134] Exec. Order No. 12958, 60 FR 19,825 (Apr. 17, 1995).
[135] DOD Comments at 15.
[136] DOD Reply Comments at 2.

a reasonable balance between protecting national security interests and providing auction participants with the necessary information to bid for licenses. Again, commenters have not made a convincing argument for needing more information than that related to cost in order to formulate a bidding strategy. Post-auction, the auction winner or the licensee, with proper security clearances, can have access to classified information consistent with the National Industrial Security Program Operating Manual. With respect to sensitive assignments, NTIA will request that Federal entities review sensitive assignments and consider the releasability of those assignments to the extent possible. Otherwise, we will provide a single, consolidated and unclassified figure for the cost of relocating, retuning or modifying sensitive assignments, and require that the winning bidder or licensee sign a non-disclosure agreement regarding sensitive information pertaining to the Federal assignment, if required. The consolidated figure would be broken down by geographical location and spectrum block to the extent possible.

Negotiation and Mediation

61. The NPRM sets out proposed rules regarding negotiation and/or mediation between the Federal entities and the winning bidders and licensees. DOD objects to the proposed rules as they relate to issues other than costs.[137] Proposed rule 301.120(a) provides in part that ''parties are encouraged to resolve any differences with respect to relocation or modification costs **or any other related issues** * * *'' [138] According to DOD, 47 U.S.C. section 923(g)(1)(E) only permits NTIA and the FCC to develop rules resolving differences between the Federal Government and licensees with respect to estimates of relocation or modification costs. Thus, DOD believes that the mediation and negotiation process should not include issues other than cost.[139]

62. We believe that DOD's interpretation of the statute is too restrictive. Initially, we note that costs, or issues closely related to costs, will be the primary focus of any negotiation or mediation. We believe, however, that issues other than costs will arise in these negotiations and that these rules are intended to incorporate those issues. For example, the Petition for Relocation clearly gives NTIA the authority to make determinations on a number of issues other than costs. Pursuant to the statute, when NTIA is presented with a Petition for Relocation, it must make a determination on whether the person seeking relocation has guaranteed to pay all relocation costs, whether all activities necessary for relocation have been implemented, and whether replacement facilities, equipments modifications or other changes have been implemented.[140] Thus, the statute gives NTIA authority to make determinations on issues other than costs. More importantly DOD admits in this proceeding that NTIA has the authority to make a determination ''that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is (i) consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and (ii) suitable for the technical characteristics of the system and consistent with other uses of the band.'' [141] This issue, which DOD admits NTIA can make a determination on, does not relate to cost. We believe that the statute provides authority for NTIA to promulgate rules that permit the parties to negotiate and/or mediate about relocation or modification costs ''or any related issues.'' The rules that we adopt in this proceeding are intended to afford parties enough flexibility in their negotiations to ensure that the Federal agencies are fully reimbursed and that the spectrum is made available to the private sector in an expeditious manner. We see no benefit in limiting the issues that the parties wish to negotiate. Thus, we adopt the proposed rules regarding negotiation and mediation.

Petition for Relocation

63. The NPRM discusses the Petition for Relocation, which a licensee seeking to relocate a Federal entity must submit to NTIA in order for NTIA to eventually limit or terminate the Federal entity's license.[142] The statute requires NTIA to limit or terminate the Federal entity's licenses within six months after receiving the petition if the following requirements are met:

(A) The person seeking relocation of the Federal Government station has guaranteed to pay all relocation or modification costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fee costs;

(B) All activities necessary for implementing the relocation or modification have been completed, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining new frequencies for use by the relocated Federal Government station;

(C) Any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government's station is able to accomplish its purpose; and

(D) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate is:

(i) Consistent with obligations undertaken by the United States in international agreements and United States national security and public safety interests; and

(ii) Suitable for the technical characteristics of the system and consistent with other uses of the band.[143]

64. According to DOD's comments, NTIA is only required to make a determination on the fourth condition, *i.e.,* ''the proposed use of the spectrum frequency band to which the Federal entity will relocate is consistent with * * *.'' [144] With respect to the other three conditions, DOD maintained that NTIA should defer to the Federal entity. DOD recommended that the proposed rules that reference NTIA's determination on a Petition for Relocation be changed to reflect that interpretation.[145] Moreover, DOD recommended that the proposed rule be amended to require NTIA to serve a copy of the Petition to Relocate on the affected Federal entity.[146] DOD also claimed that the proposed rule stating that NTIA may consult with the Office of Management and Budget and other executive branch agencies in making its determination, is not necessary because ''NTIA can always consult with OMB or other agencies.'' [147]

65. DOD's view is overly narrow in this area. If the statute did not contemplate that NTIA would make a determination on all of the factors surrounding a Petition for Relocation, then there would have been no need for a party to submit a Petition for Relocation to NTIA. Moreover, Congress clearly identified that portion of the

[137] DOD Comments at 18.

[138] NPRM at p. 4781 (emphasis added).

[139] DOD Comments at 18.

[140] 47 U.S.C. 923(g)(2)(A)–(C).

[141] *Id.* 923(g)(2)(D); *see also* DOD Comments at 16–17.

[142] NPRM at ¶ 39–41.

[143] *Id.* at ¶ 39; *see also* 47 U.S.C. 923 (g)(2)(D).

[144] DOD Comments at 16–17.

[145] *Id.*

[146] *Id.* at 17.

[147] *Id.* at 18.

Petition for Relocation upon which NTIA could not solely make a determination. Subsection 2(D) provides that NTIA must consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government when determining whether the Petition for Relocation is consistent with obligations undertaken by the United States in international agreements and with Untied States national security and public safety interest.[148] If NTIA was required to consult with or defer to other agencies on other Petition for Relocation factors, Congress would have expressly made that clear, as it did in section 2(D). ''Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' [149] Accordingly, DOD's proposal that NTIA defer to the Federal entity on a Petition for Relocation is rejected, and NTIA will make its own determination on the factors presented in a Petition for Relocation.

Arbitration

66. The NPRM sought comments on the requirement that parties enter into non-binding arbitration if they have not reached agreement after the negotiation/mediation period and have not agreed to extend such period, or if the time on a prior extended negotiation/mediation period has expired. The arbitrator's non-binding decision may then be requested by NTIA as part of the record in a petition for relocation. The American Arbitration Association (AAA) noted that the disputes likely to arise from these proceedings would be well suited for resolution through arbitration. In fact, the AAA suggested using binding arbitration in disputes related to cost sharing.[150] DOD supported the use of non-binding arbitration when the parties do not come to an agreement and notes that it is not able to engage in binding arbitration at this time.[151]

67. As mentioned, Congress authorized NTIA and the FCC to develop procedures for the implementation of relocation of Federal Government stations, including a process for resolving any differences that may arise between the Federal Government and commercial licensees regarding estimates of relocation or modification costs.[152] The Administrative Dispute Resolution Act (ADRA),[153] as amended, was enacted to authorize and encourage the use of alternative means of dispute resolution by Federal agencies. Congress recognized that the use of prompt and informal methods of dispute resolution, such as conciliation, mediation and arbitration, yields significant cost-savings and efficiencies, among other advantages, and results in outcomes that are more stable and less contentious.[154] We note DOD's comments regarding its inability to engage in binding arbitration pursuant to the ADRA, and because other agencies may likewise be prohibited from engaging in binding arbitration, we will not include it in our rules as the AAA recommends. Accordingly, we adopt with minor changes the proposed rule with respect to non-binding arbitration.

Reclamation

68. AT&T recommended that NTIA narrowly construe the Government's right to reclamation under title 47 U.S.C. section 923(g)(3), which requires the non-Government licensee to take reasonable steps to remedy defects or to move a Federal entity back to its original spectrum if that entity demonstrates that the new facility is not comparable to the original facility.[155] AT&T argued that the imposition of such burdens on licensees is inappropriate when Federal entities have failed to raise such comparability issues with the auction winners.[156] We noted in the NPRM that a Federal entity must demonstrate ''to the FCC'' that its new facilities are not comparable in order to reclaim previously held facilities.[157] We also noted that the FCC would be promulgating rules regarding a Federal entity's right to reclaim.[158]

Regulatory Flexibility Act

69. As required by the Regulatory Flexibility Act,[159] an Initial Regulatory Flexibility (IRFA) was prepared for the NPRM. Written comments were requested but none were submitted that directly addressed the issues raised in the IRFA. There was very little mention of small businesses in the comments submitted in response to the NPRM. The comments that addressed small businesses are discussed in the text of the final rules, and repeated below. None of the comments received raised issues with respect to the impact of these rules on small businesses. NTIA has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of this rule. NTIA's final regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act [160] is as follows:

70. *Need for, and Objectives of, the Rules:* This rulemaking proceeding implements procedures pursuant to NDAA–99 for the reimbursement of relocation costs to Federal entities by the private sector as a result of reallocation of frequency spectrum. NDAA–99 requires the private sector to reimburse Federal entities for the costs that are incurred as a result of the reallocation of radio spectrum mandated by OBRA–93 and BBA–97 and future reallocations. Moreover, NDAA–99 requires NTIA and the Commission to ''develop procedures for the implementation of [relocation] which * * * shall include a process for resolving any differences that arise between the Federal Government and commercial licensees regarding estimates of relocation and modification costs.'' [161] These rules provide relevant information regarding reimbursement, such as: identification of frequency assignments eligible for reimbursement; a definition of marginal costs that are reimbursable; a description of the dispute resolution process; and criteria for determining a comparable facility.

71. *Issues Raised in Response to the IRFA:* Although requested, there were no comments that raised issues directly in response to the IRFA. There were, however, comments submitted in response to the NPRM that addressed the economic impact of these rules. As noted in the discussion of the the final rules, commenters recommended that, if relocation costs were to be paid from auction proceeds, the overall financial burden associated with these rules would be reduced. AT&T, for example, argued that reducing the overall financial obligations of potential bidders to payment for the spectrum would increase the number of bidders that could participate in the auction.'' [162] MicroTrax states that paying relocation costs from auction revenues would encourage participation from smaller firms because such firms would not face uncertainty about total spectrum

[148] 47 U.S.C. 923(g)(2)(D).

[149] *Rusello* v. *United States,* 464 U.S. 16, 23 (1983).

[150] American Arbitration Association Comments at 1.

[151] DOD Reply Comments at 3.

[152] 47 U.S.C. 923(g)(1)(E).

[153] Pub. L. No. 101–552, 104 Stat. 2736 (1990), *amended by* Pub. L. No. 104–320, 110 Stat. 3870 (1996), *codified at* 5 U.S.C. 571, *et seq.* (2001).

[154] H.R. Rep. No. 101–513, 1 (1990).

[155] AT&T Comments at 16.

[156] *Id.* at 17.

[157] NPRM at n. 29.

[158] *Id.*

[159] *See* 5 U.S.C. 603.

[160] *See* 5 U.S.C. 604.

[161] *See* 47 U.S.C. 923(g)(1)(E).

[162] AT&T Comments at 12.

costs.[163] Motorola likewise argues that paying relocation costs from auction revenues would provide a level of certainty and, in turn, enable new entrants faster access to encumbered spectrum.[164]

72. Although there may be some merit in the arguments made by commenters, the legislation does not permit auction proceeds to be used to pay for relocation costs. Although reimbursement from auction proceeds may be a less expensive alternative and one that could possibly lessen the economic impact on small businesses, that is not an alternative that is legally permissible at this time. We note, however, that the President's Budget for Fiscal Year 2003 included a proposal to amend the current statute to streamline the reimbursement process by creating a central spectrum relocation fund in which auction receipts sufficient to cover agencies' relocation costs would be deposited, and from which Federal agencies would be reimbursed.[165] Legislative action would be necessary to implement this proposal. We do not believe that we have the statutory authority under the current law to pursue this alternative at this time.

73. *Description and Estimate of the Number of Small Entities to Which the Rule Will Apply:* None of the comments submitted in response to the NPRM addressed the number of small entities to which these rules will apply. As noted in the IRFA, it is difficult, if not impossible to estimate the number of small entities, if any, to which these rules will apply. Although NTIA makes reallocated spectrum available to the FCC for auction to the private sector, NTIA has no control over: (1) The auction participants; (2) the auction winners; or (3) the service for which the spectrum will be used. A determination of those factors is critical to providing a description or estimate of the number of small entities to which these rules will apply. There is no way, at this time, to predict the types of entities that will be potential bidders for spectrum that the FCC makes available in the future. In fact, entities that are not even in existence at this time may be participating in future auctions for particular spectrum frequencies and be subject to these rules. We note, however, that the FCC promulgates service rules prior to auctions that provide a description and estimate of the number of small entities that are affected by that particular auction.

74. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:* The NPRM proposed and solicited a number of alternatives to minimize the economic impact on small entities. For example, the NPRM solicited comments on whether a Federal entity could retune or modify its equipment outside of the upper or lower portion of the incumbent band. Retuning is usually less expensive to implement and can save an agency a considerable amount of money, thereby reducing the reimbursement obligation of the private sector. We received comments supportive of this alternative and, therefore, we will permit Federal agencies to retune or modify their equipment when feasible. This alternative will minimize the economic impact of small entities to the extent that they bid on licenses subject to reimbursement.

75. Another alternative suggested in the NPRM was to permit Federal entities to relocate to a landline communications system or a commercial radio service. As stated in the text of the final rules, commenters overwhelmingly agreed that agencies should be reimbursed for relocation costs if they choose to relocate to a landline or commercial service. This option may be a cost-effective alternative to the Federal entity relocating to another frequency, and thus may reduce the reimbursement obligation borne by the private sector and, perhaps, small entities.

76. The proposed rules address those circumstances where one auction winner could be made to pay for the entire spectrum allocation held by a Federal entity despite the fact that only a portion of the bandwidth may be needed. For example, there may be multiple bidders in a geographic area for a small bandwidth that may result in division of a Federal entity's bandwidth. Because there is no mechanism in place to compensate the Federal entity for that portion of the spectrum that is not licensed or acquired by a particular licensee, relocation costs could disproportionately fall upon one auction winner. In the NPRM, we proposed establishing a clearinghouse to administer a cost-sharing plan. The comments received in response to the NPRM were supportive of the proposal, and recommended that NTIA adopt an industry-run clearinghouse similar to the one adopted by the FCC in the relocation of microwave incumbents. In the text of the final rules, we note our intention to seek proposals for a clearinghouse or some other entity to administer a cost-sharing plan. A cost-sharing plan would spread the financial burdens among the auction participants, thereby reducing the overall financial obligation on an individual licensee.

77. The NPRM solicited proposals on other alternatives that may reduce reimbursement expenses and thus reduce the economic impact on small entities. As stated above, the only alternative suggestion that we received from the comments was to pay for reimbursement from auction proceeds. As noted above, the current legislation does not permit us to pursue this alternative.

78. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* These rules do not impose reporting, recordkeeping or other compliance requirements on the private sector, small entities or otherwise.

Summary of Cost/Benefit Analysis

79. NTIA prepared an Analysis of Benefits and Costs of the Mandatory Reimbursement Rules (Analysis). To view the complete analysis, please contact Milton Brown at the address and telephone number provided above. In summary, the analysis reveals the difficulty in performing a realistic cost-benefit analysis because of the number of factors that cannot be foreseen at this stage that would weigh heavily into such an analysis. Although NTIA makes reallocated spectrum available to the Federal Communications Commission (FCC) for auction to the private sector, NTIA has no control over: (1) The auction participants; (2) the auction winners; or (3) the service for which the spectrum will be used. Those determinations are all within the authority of the FCC and play a significant role in any analysis of benefits or costs. We note in the analysis that this rulemaking examined a number of alternatives to accomplish the statutory directive. For example, we determined that allowing Federal entities to retune equipment, and to relocate to landline or commercial systems may be a cost-effective alternative to relocating to another set of frequencies. This rulemaking also explored the option of cost-sharing in those situations where relocation costs could disproportionately fall upon one auction winner. We note also that the benefits of the rule include the addition of commercial wireless services for consumers. Without the rules, there would be a cloud of uncertainty over the auction, the relocation process, and the reimbursement obligations. These issues are discussed in greater detail in the full

[163] MicroTrax Comments at 2.

[164] Motorola Comments at 6.

[165] Budget of the United States Government, Fiscal Year 2003, Appendix, at 241 (Department of Commerce, National Telecommunications and Information Administration).

analysis, as well as in the text of the discussion section of the final rules.

List of Subjects in 47 CFR Part 301

Classified information, Communications common carriers, Communications equipment, Defense communications, Federal buildings and facilities, Radio, Satellites, Telecommunications.

Nancy J. Victory,

Assistant Secretary for Communications and Information.

Rules

Accordingly, NTIA amends 47 CFR chapter III by adding part 301 to read as follows:

PART 301—MANDATORY REIMBURSEMENT FOR FREQUENCY BAND OR GEOGRAPHIC RELOCATION OF SPECTRUM-DEPENDENT SYSTEMS

Subpart A—General Information

Sec.
301.1 Purpose.
301.10 Applicability.
301.20 Definitions.

Subpart B—Procedure for Reimbursement for Relocations and Dispute Resolution

301.100 Costs to relocate.
301.110 Notification of marginal costs.
301.120 Negotiations and mediation.
301.130 Non-binding arbitration.
301.140 Petition for relocation.
301.150 Request for withdrawal.

Authority: 47 U.S.C. 921, *et seq.*; Pub. L. 105–261, 112 Stat. 1920.

Subpart A—General Information

§ 301.1 Purpose.

Pursuant to Public Law 105–261 (112 Stat. 1920), private sector entities are required to reimburse Federal users for relocation of Federal Government stations from one or more frequencies due to reallocation. Reimbursement costs are in addition to funds paid by the non-Government licensee in connection with grant of the license by the Federal Communications Commission.

§ 301.10 Applicability.

(a) *Affected bands.* (1) These provisions apply to Government assignments in the following bands of frequencies located below 3 GHz:

(i) 216 to 220 MHz.
(ii) 1432 to 1435 MHz.
(iii) 1710 to 1755 MHz.
(iv) 2385 to 2390 MHz.

(2) NTIA will identify additional bands that may become subject to this part in a public notice and request for comments published in the **Federal Register**.

(b) *Availability of comparable facility.* The Federal entity will not be required to relocate until a comparable facility, or modification to an existing facility, is available in enough time to determine comparability, make adjustments, and ensure a seamless handoff. The factors to be considered in determining comparability include at least communications throughput, system reliability, operating costs, and operational capability as defined in this part. These factors may not be appropriate to determine comparable facility for certain Federal Government stations required to relocate, such as radar systems.

(c) *Frequency assignments eligible for reimbursement.* (1) *Equipment modification/Retuning.* To the extent that a Federal entity that is required to relocate is able to modify/retune its equipment with the result that the modified equipment provides operational capabilities comparable with the original system, reimbursement will be limited to the marginal costs associated with modification/retuning.

(2) *Old assignments/new assignments.* Old assignments are those that were authorized prior to October 17, 1998 (i.e., 216–220 MHz, 1432–1435 MHz, 1710–1755 MHz, 2385–2390 MHz). New assignments are those assignments in the affected bands that were authorized after October 17, 1998. New assignments in the affected bands are not eligible for reimbursement under these rules.

(3) *Exempted Federal power agencies and other exempted assignment.* Frequency assignments in the 1710—1755 MHz band that are exempt from reallocation requirements are not required to relocate and therefore are not entitled to reimbursement under these rules. Federal agencies may accept reimbursement for relocation costs of exempted assignments in cases of voluntary relocation.

(4) *Experimental stations.* Frequency assignments for experimental stations or experimental testing stations are not entitled to reimbursement under this part. Reimbursement shall apply to experimental stations that have been certified for spectrum support prior to October 17, 1998 by NTIA for stage 3 developmental tests under section 10.3.1. of the NTIA Manual of Federal Regulations and Procedures for Federal Radio Frequency Management. This manual is available on NTIA's website at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html.* The manual is also available from the U.S. Government Printing Office (S/N: 903–008–0025–3).

(5) *Certain other government stations.* Other exempted stations identified under the 1995 Spectrum Reallocation Final Report and the 1998 Spectrum Reallocation Report are not required to relocate and therefore are not entitled to reimbursement under these rules. These agencies may, however, accept reimbursement for relocation costs in cases of voluntary relocation.

(d) *Sunset of reimbursement rights.* There is no sunset of reimbursement rights for affected agencies.

(e) *Authority.* The rules set forth in this subpart in no way affect what authority, if any, has been delegated to the Federal entity to negotiate or contract on behalf of the United States.

§ 301.20 Definitions.

As used in this part:

(a) The term *allocation* means an entry in the National Table of Frequency Allocations (47 CFR 2.105) of a given frequency band for the purpose of its use by one or more radiocommunication services, or the radio astronomy service under specified conditions.

(b) The term *assignment* means authorization for a Government radio station to use a radio frequency or frequencies or radio frequency channel or channels under specified conditions.

(c) The term *auction* means the competitve bidding process that Congress authorized the Federal Communication Commission to use in Title VI of the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997 for the reassignment and licensing of spectrum identified in § 301.10(a) for certain commercial radio-based services.

(d) The term *classified assignment* means a frequency assignment and information related to a frequency assignment that has been determined pursuant to Executive Order 12958 or any predecessor order or successor executive order to require protection against unauthorized disclosure and that is marked as ''confidential,'' ''secret,'' or ''top secret'' to indicate its classified status when in documentary form.

(e) The term *Commission or FCC* means the Federal Communications Commission.

(f) The term *communications throughput* means the amount of information transferred within the system for a given amount of time. For digital systems, the communications throughput is measured in bits per second (bps); for analog systems, the communications throughput is measured by the number of voice, video or data channels.

(g) The term *comparable facility* means that the replacement facility restores the operational capabilities of the original facility to an equal or

superior level taking into account at least four factors: Communications throughput, system reliability, operating costs, and operational capability.

(h) The term *experimental station* means a station utilizing radio waves in experiments with a view to the development of science or technique.

(i) The term *experimental testing station* refers to an experimental station used for the evaluating or testing of electronics equipment or systems, including site selection and transmission path surveys.

(j) The term *Federal entity* means any department, agency or other instrumentality of the Federal Government that utilizes a Government station authorization obtained under section 305 of the Communications Act of 1934 (47 U.S.C. 305).

(k) The term *in-kind* means the value of non-cash contributions provided by non-Federal private parties. In-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

(l) The term *licensee* refers to a person awarded a license by the Federal Communications Commission for use of the bands identified in § 301.10. The transfer or assignment of a license does not change the time periods established in these rules.

(m) The term *marginal costs* means the costs that will be incurred by a Federal entity to achieve comparable capability of systems relocated to a new frequency assignment or band or otherwise modified. Specifically, marginal costs would include all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expenses, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities. Marginal costs would include costs related to the need to achieve comparable capability when replacing, modifying or reissuing equipment in order to relocate when the systems that must be procured or developed have increased functionality due to technological growth. Marginal costs do not include costs related to optional increased functionality that is independent of the need to achieve comparable capability. To the extent that a Federal entity needs to accelerate the introduction of systems and equipment to allow for relocation earlier than the Federal entity had planned, replacement costs of the accelerated systems and equipment shall be included in marginal costs. Marginal costs would also include the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation. Marginal costs would not include costs related to routine upgrades and operating costs and lifecycle replacements that would have occurred absent the need to relocate pursuant to these rules.

(n) The term *mediation* means a flexible and voluntary dispute resolution procedure in which a specially trained mediator facilitates negotiations to reach a mutually agreeable resolution. The mediator may not dictate a settlement. The mediation process involves one or more sessions in which counsel, parties and the mediator participates, and may continue over the period of time specified in this part. The mediator can help the parties improve communication, clarify interests, and probe the strengths and weaknesses of positions. The mediator can also identify areas of agreement and help generate options that lead to a settlement.

(o) The term *NTIA* means the National Telecommunications and Information Administration.

(p) The term *operational costs* means the cost to operate and maintain the Federal entity's replacement facility. New licensees would compensate Federal entities for any increased recurring costs associated with the replacement facilities for five years after relocation. Such costs shall include, but not be limited to, additional rental payments and increased utility fees.

(q) The term *operational capability* means the measure of a system's ability to perform its validated functions within doctrinal requirements, including service, joint service, and allied interoperability requirements with related systems.

(r) The term *relocation* refers to the process of moving a system that is displaced as a result of reallocation.

(s) The term *sensitive assignment* refers to those assignments whose operations or technical parameters are not releasable to the public under the Freedom of Information Act.

(t) The term *system reliability* means the percentage of time information is accurately transmitted within a system. The reliability of a system is a function of equipment failures (e.g., transmitters, feed lines, antennas, receivers and battery back-up power), the availability of the frequency channel given the propagation characteristics (e.g., frequency, terrain, atmospheric condition and noise), and equipment sensitivity. System reliability also includes the ability of a radio-communications station to perform a required function under stated conditions for a stated period of time. System reliability may involve three concepts: Attaining a specified level of performance; the probability of achieving that level; and maintaining that level for a specified time. For digital systems, system reliability shall be measured by the percentage of time the bit error rate (BER) exceeds a desired value; and for analog transmissions, this would be measured by the percentage of time that the received carrier-to-noise ratio exceeds the receiver threshold.

Subpart B—Procedure for Reimbursement for Relocations and Dispute Resolution

§ 301.100 Costs to relocate.

(a) Relocation costs. The licensee is required to reimburse the Federal entity for all costs incurred as a result of modification, retuning and/or relocation.

(b) Method of reimbursement. Reimbursement payments shall be made in advance of relocation and may be in cash or in-kind as agreed to by the affected Federal entity. Any such payment in cash shall be deposited in the account of such Federal entity in the Treasury of the United States or in a separate account as authorized by law. If actual costs are less than the payments made, the Federal entity shall refund the difference.

§ 301.110 Notification of marginal costs.

(a) NTIA shall provide the Federal entity's estimated marginal cost information to the FCC at least 180 days prior to the date on which the FCC schedules an auction to commence. Marginal costs, as defined in § 301.20(l), are the costs that will be incurred by a Federal entity to achieve comparable capability of systems relocated to a new frequency assignment or band or otherwise modified. Any Federal entity that proposes to relocate, modify or retune shall notify NTIA at least 240 days before the auction of the marginal costs anticipated to be associated with relocation or with modifications necessary to accommodate prospective licensees. The information provided to NTIA must also include the name and telephone number of a person within the Federal entity that can be contacted by the auction winner or licensee.

(b) *Unclassified assignments.* NTIA will provide the following information to the FCC prior to the date on which the FCC scheduled the auction to

commence with respect to unclassified Government facilities:

(1) List of Government facilities.

(2) Government agency operating each facility.

(3) Location of each facility.

(4) General type of operation and equipment.

(5) Whether the facility can be retuned, modified, or must be relocated.

(6) Estimated marginal cost of retuning, modification, or relocation.

(7) Total estimated costs for all assignments.

(c) *Classified assignments.* Prior to the date on which the FCC has scheduled an auction to commence, Federal entities located on the spectrum to be auctioned will provide a single, consolidated and unclassified figure to NTIA for the cost of relocating, retuning, or modifying all such classified systems. NTIA will provide this information to the FCC which in turn will provide the figure to bidders with the following conditions: To the extent it is consistent with national security considerations, the figure may be broken down by geographical location and spectrum block to give those bidding on a geographic basis the best indication possible of the cost they may have to pay to relocate, retune or modify the systems at issue. Following the auction, the winner may apply for a facility clearance pursuant to the National Industrial Security Program Operating Manual and related individual security clearances. If those clearances and accesses are granted, classified information may be made available with regard to certain Government systems in accordance with the terms and conditions prescribed in the clearances and accesses provided, and subject to the overall rules and authorities found in Executive Order 12958, Executive Order 12968, and related Federal laws, rules and regulations.

(d) *Sensitive assignments.* Prior to the date on which the FCC has scheduled an auction to commence, Federal entities will provide a single, consolidated and unclassified figure to NTIA for the cost of relocating, retuning, or modifying all such sensitive systems. NTIA will provide this information to the FCC which in turn will provide the figure to bidders with the following conditions: To the extent it is consistent with the sensitive nature of the assignment, the figure may be broken down by geographical location and spectrum block to give those bidding on a geographic basis the best indication possible of the cost they may have to pay to relocate, retune or modify the systems at issue. Following the auction, the Government agency shall release the sensitive information to the winning licensee pursuant to a non-disclosure agreement, if required.

§ 301.120 Negotiations and mediation.

(a) Within 30 days after public notice of the grant of a license for use of the bands identified in § 301.10, the licensee is required to provide the Federal entity that occupies the band with written notification of such event. Public notice of the grant commences the 135-day period for negotiation or mediation. During this period, parties are encouraged to resolve any differences with respect to relocation or modification costs or any other related issues, either through party-to-party negotiations and/or a third party mediator. Each party shall pay its own costs for negotiation and mediation. If, at the end of the 135-day period, the parties have not reached an agreement with respect to relocation, the parties may agree to extend the negotiation period.

(b) *Good faith obligation.* The parties are required to negotiate in good faith. Good faith means that:

(1) Neither party may refuse to negotiate; and

(2) Each party must behave in a manner necessary to facilitate the relocation process in a timely manner. Classified or sensitive information will be treated in accordance with § 301.110.

§ 301.130 Non-binding arbitration.

If the parties have not reached agreement to extend the negotiation/mediation period, or if a previously extended negotiation/mediation period expires, the parties shall enter into non-binding arbitration. The parties shall agree on an arbitrator, and the arbitrator may not be the same person as the mediator if mediation has been used by the parties and failed. The parties may design such rules for arbitration as deemed appropriate. The arbitrator's non-binding written decision may be requested by NTIA as part of the record in its determination on a petition for relocation under § 301.140. The decision may be a factor, among other things, in the NTIA determination on a petition for relocation. Each party shall pay its own costs for arbitration and share equally the cost of the arbitrator.

§ 301.140 Petition for relocation.

(a) *In general.* A licensee seeking to relocate a Federal Government station must submit a petition for relocation to NTIA. A copy of the petition must also be simultaneously provided to the FCC. NTIA's determination shall be set forth in writing within six months after the petition for relocation has been filed, and be provided to the auction winner and the Federal entity. NTIA shall limit or terminate the Federal entity's operating license within six months after receiving the petition if the following requirements are met:

(1) The person seeking relocation of the Federal Government station has guaranteed to pay all modification and relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fees;

(2) All activities necessary for implementing the relocation or modification have been completed, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining new frequencies for use by the relocated Federal Government station (where such station is not relocating to spectrum reserved exclusively for Federal use);

(3) Any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government station is able to accomplish its purposes; and

(4)(i) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is

(A) Consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and

(B) Suitable for the technical characteristics of the system band and consistent with other uses of the band.

(ii) In exercising its authority, NTIA shall consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government.

(5) If these requirements are not met, NTIA shall notify the petitioner that the request is declined and the reasons for denial.

(6) If NTIA does not issue a determination under this section within 6 months of the filing of a Petition for Relocation, the Petition for Relocation is deemed to be denied.

(7) In making its determination under this section, NTIA shall consult with the affected Federal entity and the Office of Management and Budget and other executive branch agencies.

(b) *Petition after agreement between the parties.* The licensee may file a petition for relocation pursuant to § 301.140 at anytime after the parties have reached agreement on relocation in negotiations or mediation as provided in § 301.120 and submit the agreement as evidence of having met the

requirements of the Petition for Relocation.

(c) *Petition after failure to reach an agreement.* If the parties fail to reach an agreement as provided in § 301.120 and non-binding arbitration has occurred pursuant to § 301.130, the licensee may file a petition for relocation with NTIA after a decision has been rendered by the arbitrator. Any recommended decision by the arbitrator may be requested by NTIA as part of the record in a petition for relocation under § 301.140. The recommended decision may be a factor, among others, in the NTIA determination on the Petition for Relocation.

§ 301.150 Request for withdrawal.

As an alternative to a Petition for Relocation, if the parties reach an agreement in negotiations or mediation or agree with the decision of the arbitrator, the Federal entity may seek voluntary withdrawal of the assignments that are the subject of the relocation.

[FR Doc. 02–15118 Filed 6–14–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 385

[Docket No. FMCSA–2001–11060]

RIN 2126–AA64

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors; Delay of Effective Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; delay of effective date.

SUMMARY: The FMCSA delays for 30 days the effective date of the interim final rule titled ''Certification of Safety Auditors, Safety Investigators, and Safety Inspectors,'' published in the **Federal Register** on March 19, 2002 at 67 FR 12776. That rule establishes procedures to certify and maintain certification for auditors and investigators. It also requires certification for State or local government Motor Carrier Safety Assistance Program (MCSAP) employees performing driver/vehicle roadside inspections. The FMCSA needs more time to review all of the comments received on this rulemaking.

DATES: The effective date of the interim final rule amending 49 CFR parts 350 and 385 published at 67 FR 12776, March 19, 2002, is delayed for 30 days from June 17, 2002 until July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Minor, 202–366–4009, Acting Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., MC–PSD, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FMCSA believes that an additional 30 days are necessary to fully consider all of the comments received on the rule, including those related to potential environmental impacts of this action. The FMCSA's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553 (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The brief 30-day delay in effective date is necessary to give agency officials the opportunity to do further analysis in response to the comments. Given the imminence of the effective date, seeking prior public comment on this brief delay would have been impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Dated: June 12, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–15272 Filed 6–13–02; 11:55 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 020319061–2122–02; I.D. 031402B]

RIN 0648–AP81

Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is prohibiting the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay effective immediately through June 30 and then from May 8 to June 30 each year. The affected area includes all Chesapeake Bay waters between the Maryland and Virginia state line (approximately 38° N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. NMFS is also imposing year round reporting and, when requested, monitoring requirements for the Virginia pound net fishery. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered and to enable the agency to gather further information about sea turtle interactions in the pound net fishery.

DATES: Effective June 12, 2002, with the exception of 50 CFR 223.206(d)(2)(v)(C), which requires approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act. The effective date of 50 CFR 223.206(d)(2)(v)(C) will be announced in the **Federal Register**.

Comments on this interim final rule are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on July 17, 2002.

ADDRESSES: Written comments on this action or requests for copies of the literature cited, the Environmental Assessment (EA), or Regulatory Impact Review (RIR) should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978–281–9394. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Mary A. Colligan (ph. 978–281–9116, fax 978–281–9394), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

Pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers have been documented to incidentally take sea turtles (Bellmund *et al.*, 1987). High strandings of threatened and endangered sea turtles are documented on Virginia beaches each spring, and the magnitude of the stranding event has

increased in recent years. No cause of mortality is immediately apparent for the majority of turtles that strand in Virginia, but the circumstances surrounding the recent stranding events are consistent with fishery interactions. In 2001, NMFS explored the various mortality sources potentially contributing to the high annual stranding event. While a number of fisheries may contribute to sea turtle strandings, based upon the best available information, pound net leaders were a likely contributor to high sea turtle strandings in Virginia in May and June of 2001. The documented incidental take of sea turtles in leaders, the ability of leaders to continue to take sea turtles in the future, and the annual high mortality of sea turtles in Virginia in May and June are of particular concern because approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining. In addition, recently most of the stranded turtles have been juveniles, a life stage found to be critical to the long term survival of the species. This action is necessary to provide for the conservation of threatened and endangered turtles by minimizing incidental take in the Virginia pound net fishery during the spring. Details concerning the justification for the pound net leader restriction regulations and the high sea turtle stranding events in Virginia were provided in the preamble to the proposed rule (67 FR 15160, March 29, 2002) and are not repeated here.

Approved Measures

To conserve sea turtles, the Assistant Administrator, NOAA, (AA) prohibits the use of all pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year. The area where this gear restriction applies includes the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia state line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

This prohibition of pound net leaders is effective upon filing through June 30 for this year, and from 12:00 a.m. local time on May 8 through 11:59 p.m. local time on June 30 each subsequent year. For the duration of this gear restriction, fishermen are required to stop fishing with pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers in the designated area.

In addition to establishing the annual restriction on leader mesh size and leaders with stringers, this interim final rule also establishes year-round reporting (enforceable after OMB approval pursuant to the Paperwork Reduction Act (PRA)) and monitoring requirements for this fishery.

This interim final rule also establishes a framework mechanism by which NMFS may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NMFS believes based on, for example, vessel reports, observer information, or water temperature and the timing of sea turtles' migration, that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30, the AA may extend the effective dates of the prohibition established by this regulation. Should an extension of the effective dates of the prohibition of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers be necessary, NMFS would issue a final rule to be effective upon publication in the **Federal Register** explicitly stating the duration of the extension of the prohibition. Under this framework provision, such an extension would not exceed thirty days, or beyond July 30. Should NMFS determine that this gear restriction needs to be in place at other times of the year, NMFS would take action either pursuant its emergency rulemaking authority under the ESA or under the Administrative Procedure Act, but not under the framework mechanism established by this rule.

NMFS intends to continue to monitor sea turtle stranding levels and other fisheries active in the Virginia Chesapeake Bay and ocean waters, including pound net leaders with a stretched mesh size measuring less than 12 inches (30.5 cm). If monitoring of pound net leaders during the time frame of the gear restriction, May 8 through June 30 of each year, reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. Such additional restrictions may include reducing the allowable mesh size for pound net leaders or prohibiting all pound net leaders regardless of mesh size in Virginia waters. Should NMFS determine that an additional restriction is warranted, NMFS would immediately file a final rule with the Office of the Federal Register. Such a rule would explicitly state the new mandatory gear restriction as well as the time period, which may also be extended for up to 30 days by a final rule pursuant to this framework mechanism. The area where additional gear restrictions would apply includes the same area as the initial restriction, namely the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 38° N. lat.) to the COLREGS line at the mouth of the Chesapeake Bay, and portions of the James River, the York River, and the Rappahannock River.

Comments and Responses

On March 29, 2002, NMFS published a proposed rule that would prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay from May 8 to June 30 each year. Comments on this proposed action were requested through April 15, 2002. Nine comment letters were received during the public comment period for the proposed rule. NMFS considered these comments on the proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses, grouped according to general subject matter, is provided here.

General Comments

Comment 1: Six commenters supported the adoption of the proposed regulations to ensure sea turtle populations are not further compromised in the Virginia Chesapeake Bay.

Response: NMFS agrees that the restriction of pound net leaders is necessary to conserve sea turtles listed as threatened or endangered under the ESA.

Comment 2: Two commenters stated that the proposed pound net restrictions may not be effective at reducing spring sea turtle strandings in Virginia waters. Both commenters suggested NMFS

consider the contribution of other fisheries active in Virginia during the spring to the high turtle strandings.

Response: NMFS does not believe that pounds nets are the sole source of spring turtle mortalities in Virginia. NMFS does believe that pound nets play a role in the annual spring stranding event. Prohibiting a gear type known to entangle sea turtles, leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers, will protect sea turtles from entanglement in pound net leaders while minimizing the impacts to the pound net fishery. However, should sea turtle entanglement in compliant pound net leaders occur, NMFS may enact additional management measures as appropriate.

Based upon available information, it does not appear that another fishery was a significant contributor to the high strandings exhibited in 2001. In fact, a number of the fisheries active in the spring had adequate observer coverage, and few turtle takes were observed. However, NMFS recognizes that variations in fishery-turtle interactions may occur in any given year, and is committed to continued monitoring of fisheries active in Virginia state waters. Again, it should be stressed that NMFS believes that high spring strandings may be a result of an accumulation of factors, most notably fishery interactions, but pound net leaders are known to take sea turtles and likely contribute to the overall strandings.

Comment 3: Three comments were received on the timing of the regulations, namely May 8 to June 30. Two commenters supported the time frame of the restrictions. One commenter felt that the time frame of the restrictions was too long given the distribution of strandings in Virginia waters, and suggested a time period of approximately late May to mid-June.

Response: NMFS believes that, given the available information, the time period for the pound net restrictions is appropriate. From 1994 to 2001, the average date of the first reported stranding in Virginia was May 15. However, sea turtle mortality would have occurred before the animals stranded on Virginia beaches. While the peak of the spring strandings may occur later in May, historical strandings data indicate that sea turtle mortality begins in early May and regulations should be in effect as close to that time as possible if sea turtle protection measures are to be effective at reducing takes in leaders and strandings. In order for the proposed pound net restrictions to reduce sea turtle interactions with pound net leaders and reduce subsequent strandings on Virginia beaches, the proposed measures should go into effect at least 1-week prior to the stranding commencement date, or on May 8 each year. Information submitted with one of the comments shows that in approximately 7 years prior to 1994, the date of the first turtle stranding was earlier than May 15. This supports the implementation of the leader restrictions in early May.

Strandings data from 1999 to 2001 show that the state of decomposition for the majority of stranded turtles progresses with the season, suggesting that most turtles stranding in later June may have been subjected to mortality sources earlier in the season (Mansfield *et al.*, 2002). Turtles stranding in June may have been dead for anywhere from a few days to two weeks. Whether the differences in decomposition levels by week are statistically significant remains to be determined. Based on historical Sea Turtle Stranding and Salvage Network (STSSN) stranding data, strandings in Virginia typically remain elevated until June 30, indicating that turtles may be vulnerable to entanglement in pound net leaders until this time. Implementing management measures for only a 3 to 4-week period (ending in approximately early to mid-June) may result in a large number of sea turtles remaining vulnerable to pound net leader entanglement after the restrictions are lifted. Furthermore, information submitted with one of the comments shows that the stranding peak persists until late June in some years. In some years the peak period of high strandings may be shorter than the time period of the regulations, but historically, high sea turtle strandings have been documented throughout the proposed time period of the leader restrictions. Implementation of the gear restrictions from May 8 to June 30 will account for stranding peak variability among years and is expected to prevent the occurrence of sea turtle takes in the pound net fishery in the spring and reduce the high numbers of strandings in Virginia. NMFS retains the option to lift the restriction if information such as stranding levels, monitoring, or observations of turtles, suggests that it would be appropriate.

Comment 4: One commenter suggested that the initiation of large mesh and stringer prohibitions coincide with 16°C surface water temperature.

Response: While monitoring surface water temperature and implementing restrictions based on reaching a pre-designated water temperature may account for seasonal variability, enacting regulations based upon real time water temperature is impractical due to the amount of time required for the agency to implement and for fishermen to comply with the regulations, and the potential variability of water temperature within different locations in the Chesapeake Bay and within the water column. NMFS understands that the Virginia Institute of Marine Science (VIMS) has collected strandings data for 22 years, and spring strandings occur every year, generally when surface water temperature reaches 18°C. NMFS has considered historical surface water temperatures (not real time monitoring) in establishing previous area closures, but real time monitoring of water temperature as a trigger for regulations is not practical for this situation, nor is it appropriate given the predictable time period of annual spring strandings in Virginia. Further, NMFS believes that a consistent effective date better enables industry to plan their fishing activities, as fishermen would know in advance specifically when the restrictions would be effective. As mentioned, from 1994 to 2001, the average stranding commencement date in Virginia was May 15. While NMFS recognizes that the commencement date of strandings may vary from year to year, NMFS believes that an average date of May 15 accounts for seasonal variability and should be used as the average date when turtles begin to strand on Virginia shores.

Comment 5: One commenter expressed concern with the delay in publishing the proposed regulations and the limited public comment period.

Response: NMFS has been working with the Commonwealth of Virginia, in particular the Virginia Marine Resources Commission (VMRC), since August of 2001 to address potential sea turtle interactions with Virginia pound nets. In September 2001, VMRC forwarded to NMFS a proposed plan, developed in conjunction with the pound net industry and VIMS, intending to reduce sea turtle interactions with pound net leaders in Virginia. As NMFS wanted to ensure that the Commonwealth of Virginia had ample opportunity to develop a plan for reducing sea turtle interactions with pound nets, discussions on the specifics and content of this proposed plan continued until mid-December 2001. By that time, it became clear that NMFS should initiate its own rulemaking process to develop a plan to conserve listed sea turtles. NMFS has been committed to enacting regulations on the Virginia pound net fishery as expeditiously as possible, in order to give the fishermen advance notification and ensure measures are in place before the historical period of high

strandings. NMFS issued the proposed rule as soon as possible after taking the necessary time to acquire and sufficiently analyze the available data, explore all of the management alternatives, and prepare and review the appropriate documents.

Further, NMFS believes that the 15-day comment period was a reasonable amount of time given the relative simplicity of the proposed rule, consisting of only a restriction on leader mesh size and use of stringers, plus the framework procedure. A notice of the proposed regulation was also sent to all Virginia pound net licensees on March 29, 2002, to augment notice provided through the **Federal Register** and expedite public comments.

Regulation Justification Comments

Comment 6: One commenter supported that the strandings were specifically a result of fishery interactions.

Response: NMFS believes that the circumstances surrounding the recent spring strandings are consistent with fishery interactions, which include relatively healthy turtles prior to the time of their death, a large number of strandings in a short time period, no external wounds on the majority of the turtles, no common characteristic among stranded turtles that would suggest disease as the main cause of death, and turtles with fish in their stomach. Sea turtles are generally not agile enough to capture finfish under natural conditions, and thus would only consume large quantities of finfish by interacting with fishing gear or bycatch (Mansfield, *et al.* 2002, Bellmund, *et al.* 1987, Shoop and Ruckdechel 1982).

Comment 7: Two commenters felt that there is not a significant relationship between pound nets and sea turtle strandings. Both commenters noted that there are currently fewer pound nets in the Chesapeake Bay, but strandings have increased in recent years. One commenter was concerned that justification for the proposed regulations were based upon 1980s strandings data, when there were more pound nets being fished.

Response: NMFS recognizes that there are currently fewer pound net leaders, in particular those utilizing large mesh leaders, in the Virginia Chesapeake Bay in comparison to the 1980s. NMFS disagrees that turtle strandings cannot be attributed to large mesh leaders because strandings have increased while the number of large mesh leaders have decreased. The best available information does date back to the mid–1980s, but this study found that in 173 pound nets examined with large mesh leaders (defined as greater than 12 to 16 inches (30.5 to 40.6 cm) stretched mesh), 30 turtles were found entangled (0.2 turtles *per net*; Bellmund *et al.*, 1987). This study also found that in 38 nets examined with stringer mesh, 27 turtles were documented entangled (0.7 turtles *per net*). NMFS recognizes that the increase in documented sea turtle mortalities could be a function of the increase and improvement in the level of stranding effort and coverage that has occurred, as well as a function of the apparent increase in abundance of the southern population of loggerheads, which make up approximately 50 percent of the loggerheads found in the Virginia Chesapeake Bay. However, even with a decline in pound net leaders, interactions proportional to what have been documented in this gear type in the past could lead to an increase in strandings. Listed sea turtles in the Chesapeake Bay must be protected to ensure that populations recover.

In response to the claim that the information available to link the recent sea turtle mortalities to the pound net fishery is limited and old, NMFS recognizes that many of the documented sea turtle entanglements in large mesh and stringer leaders are from the 1980s, but the factors involved in entanglement remain the same now as they were then—sea turtle head and flipper size relative to leader mesh size and stringer use. Large mesh nets (regardless of how many are in the Chesapeake Bay) still entangle sea turtles, based upon the mesh size and manner in which they are fished. Additionally, the ESA requires NMFS to use the best available scientific information. There have been several documented sea turtle entanglements in large mesh leaders that were determined to have caused mortality by drowning. While it is possible that some turtles documented in 2001 may have been dead prior to entanglement and floated into the leaders, there have been observations of live turtles entangled in leaders under water.

Few sea turtles strand with evidence of fishery interactions, but the lack of gear on a carcass is not indicative of a lack of fishery interaction (see response to Comment 6). While none of the sea turtles in Virginia have had pound net fishing gear on them when they have washed up on shore, it is not unusual for turtles to strand without gear on them, especially given the fact that pound net leaders are fixed fishing structures and secured to stakes set in the ground. It is very unlikely that a turtle would dislodge the gear so that it remained on the turtle when it stranded.

Comment 8: Three commenters disagreed that pound nets are a significant factor in the high spring stranding events, given other potential mortality sources in Virginia waters (e.g., boat strikes). One commenter stated that the location of the average percentage of strandings (55 percent) from 1986 to 2001 occurred in Virginia Beach Ocean and Western Chesapeake Bay areas, and it is likely that other mortality sources outside of Virginia waters resulted in a number of these strandings.

Response: NMFS recognizes that additional mortality sources may result in sea turtle strandings in Virginia during the spring. Consequently, NMFS has investigated other potential causes for the annual spring sea turtle mortality event and concludes that natural or non-fishing related anthropogenic causes are not consistent with the nature of most of the strandings. The absence of other species in the most recent stranding events and the absence of consistently high sea turtle strandings in other Atlantic states during the time period when turtles are migrating are inconsistent with cold stunning, a toxic algae bloom, epizootic or other disease. Further, the stranded turtles exhibited no major traumatic injuries such as might be caused by dredging or blasting. From May through December 2001, Virginia STSSN members documented 34 turtles with injuries that appeared to be from boat strikes, 4 entangled or hooked in hook and line fishing gear, and 2 entangled in longline/trotline gear, but most of the stranded sea turtles appeared to be relatively healthy. It is possible that vessel collisions or recreational fishing gear resulted in some spring strandings, but if these factors were a major contributor to strandings, a larger number of stranded sea turtles would exhibit carapace wounds or imbedded fish hooks. As mentioned, the majority of the strandings were consistent with fishery interactions. Nevertheless, NMFS will continue to explore and consider the contributions of other mortality sources to the annual spring stranding event.

It is possible that some Virginia Chesapeake Bay turtle strandings are swept into the Chesapeake Bay from elsewhere, or that some sea turtles are swept out of the Chesapeake Bay and onto ocean-facing beaches (if they strand at all), as the water patterns and currents entering or leaving the Chesapeake Bay could concentrate sea turtle strandings around the mouth of the Chesapeake Bay. However, it is likely that in the Virginia Chesapeake Bay, most mortalities have occurred relatively close to the stranding location

(Lutcavage, 1981). Further, it has been estimated that strandings on ocean facing beaches represent, at best, only approximately 20 percent of the at-sea nearshore mortality, as only those turtles killed close to shore are most likely to strand (NMFS SEFSC 2001). NMFS agrees that, historically, most of the spring strandings in Virginia have been documented on the ocean facing beaches south of Cape Henry and the inshore beaches in the southern Chesapeake Bay. However, the majority of the spring strandings in 1998, 2000, and 2001 occurred in inshore waters with concentrations around the southern tip of the eastern shore and the southern portion of the Chesapeake Bay around Virginia Beach and Hampton. Strandings in 2001 were of particular concern because the majority of the strandings in May and June occurred along the Chesapeake Bay side of the eastern shore of Virginia and along the southern tip near Kiptopeke and Fisherman's Island, indicating a possible localized interaction. Pound nets are the dominant fishing gear observed immediately offshore of this area. During 1980, high strandings were also documented in areas where there were large numbers of working pound nets (Lutcavage, 1981).

As mentioned in the proposed rule (67 FR 15160, March 29, 2002), NMFS evaluated the potential inshore and offshore contributors to high strandings in 2001. While a number of the fisheries active in Virginia were observed, NMFS did not detect significant sea turtle incidental take. However, additional observer coverage is needed to better determine the level of sea turtle interactions with the various fisheries operating during the spring. NMFS intends to continue both monitoring and characterizing the offshore and nearshore Virginia fisheries that may potentially contribute to the spring strandings.

As presented in the responses to Comments 6 and 7, sea turtle interactions with fishing gear are not always apparent. NMFS must rely on the best available information to determine the cause of sea turtle mortality and enact appropriate measures to reduce this mortality. Based on the best available information, including the nature and location of turtle strandings, the type of fishing gear in the vicinity of the greatest number of strandings, the lack of observed takes in other fisheries operating in Virginia waters during the 2001 stranding period, the known interactions between sea turtles and large mesh and stringer pound net leaders, and several documented sea turtle entanglements in pound net leaders, NMFS concluded that pound nets contributed to the high sea turtle strandings in Virginia in May and June 2001.

Stranding/Entanglement Data Comments

Comment 9: Two commenters noted that the recent data on sea turtle entanglements in pound net leaders are limited (e.g., 10 turtles documented in 2001).

Response: NMFS recognizes that the data on observed sea turtle entanglements in pound net leaders are limited, and that other factors likely contribute to some spring sea turtle mortality in Virginia. The level of sea turtle interactions with other potential mortality sources (e.g., other fisheries) has not yet been conclusively determined, but available information suggests that the level of interaction between non-pound net fisheries and sea turtles in Virginia waters during the spring has not been high. Conversely, NMFS has data indicating that pound net leaders have resulted in sea turtle entanglements. The documentation of live sea turtles entangled in pound net leaders (e.g., 1 documented in 2001, 2 in 2000) with limited observer coverage, as well as previous scientific studies indicating that entanglements occur in large mesh and stringer leaders, indicates that sea turtle entanglements occur in pound net leaders and the frequency of these interactions may not have been sufficiently documented in recent years.

The exact number of turtles found in association with pound net leaders has been difficult to definitively determine, due to the number of entities involved in collecting the data and the interpretation of whether the turtle was entangled in the leader, floated in post-mortem, or impinged on the leader and died as a result. It is likely that many more turtles interacted with pound net leaders last year than were reported. Observers (NMFS, VMRC, and VIMS) did not begin to monitor pound nets until mid-June, well after the high stranding period, so some sea turtle entanglements could have been missed earlier in the season. NMFS has established a reporting system for 2002 to ensure that all involved monitoring personnel are collecting the appropriate data should an entanglement of a sea turtle in a pound net leader be documented.

Comment 10: One commenter noted that there were no turtle entanglements observed during side scan sonar surveys conducted on 55 active leaders from June 1 to October 31, 2001.

Response: The use of side scan sonar as a means to detect sub-surface sea turtle entanglements has potential, but is still being explored. A number of factors may influence the utility of sonar to detect sea turtle entanglements, including weather, sea conditions, water turbidity, the size and decomposition state of the animal, and the orientation of the turtle in the net. Further research on the effectiveness and practicality of side scan sonar techniques in observing sea turtle entanglements in pound net leaders, and real time verification of the side scan sonar surveys by video, will be conducted during May and June 2002. Until this technique can be validated with ground truthing and verification, NMFS is reluctant to base management decisions on the lack of sea turtle acoustical signatures.

Additionally, sonar surveys conducted after the initiation of the mass stranding period may not be reflective of what was occurring in May. It appears that a large number of spring sea turtle mortalities occur in May, given the decomposition states of the stranded sea turtles (Mansfield *et al.*, 2002). Sea turtles may be more common in the upper water column in May, where the surface temperatures range from 18° to 24° C (Musick and Mansfield, 2001), but they are known to occur in water temperatures 11° C or greater. As such, turtles may be periodically near the bottom during the spring and subject to entanglement in leaders sub-surface. The lack of sea turtle acoustic signatures in pound net leaders at depth during the VIMS June to October 2001 survey does not necessarily indicate that turtles are not periodically entangled sub-surface during the spring.

Comment 11: One commenter stated that the majority of strandings on the eastern shore were severely decomposed, when one would expect much fresher turtle strandings if the pound nets in close proximity to the eastern shore were responsible for the strandings.

Response: NMFS can understand how one might think that mortality sources close to shore should result in a higher proportion of fresh dead turtles. Nearshore mortality sources also would increase the likelihood for the carcasses reaching the shore. However, one factor that may contribute to the decomposition state of a stranded sea turtle is the duration of time the sea turtle is entangled in the water, or in this case, the pound net leader. It is NMFS' understanding that pound net fishermen do not typically tend their leaders, so a turtle entangled in a leader, even at the surface, may go undetected.

While additional information is necessary to adequately determine how often sea turtles become disentangled from pound net leaders, it is plausible that entangled turtles may become dislodged from pound net leaders either by the strong current in certain areas of the Chesapeake Bay, by the decomposition process, or by fishermen disentangling dead sea turtles if detected. This hypothesis needs to be explored, but it is possible that turtles remain in leaders and wash onto beaches several days, or even weeks, after their death in various stages of decomposition from slight to severe.

Gear Restriction Comments

Comment 12: Two commenters requested additional time to equip leaders with a mesh size that would be in compliance with the regulations.

Response: NMFS is sensitive to the industry's time constraints required to outfit their gear with mesh in compliance with the regulations. However, the time frame for the implementation of this regulation is also of concern, as the large mesh and stringer leader restriction should be in effect 1 week prior to the historical average stranding date to effectively protect sea turtles. Therefore, to maximize the ability to conserve sea turtles, the restrictions should be in effect immediately.

Comment 13: One commenter supported the implementation of the plan proposed by VMRC and the pound net industry (Non-Preferred Alternative 3 analyzed in the EA/RIR), namely the component of the plan requiring pound net leaders with stringers to drop the mesh to 9 feet (2.7 m) below mean low water and to space stringer lines at least 3 feet (0.9 m) apart. This commenter specifically requested implementation of a plan that would permit a leader with 16 inches (40.6 cm) stretched mesh 10 ft (3 m) below the surface.

Response: Lowering the mesh on those leaders using stringers may allow the sea turtles near the surface to swim over the larger mesh leaders and through the stringers. However, sea turtles are still vulnerable to entanglement in leaders more than 9 ft (2.7 m) below the surface. Musick *et al.*, (1984) documented two sea turtles entangled in pound net leaders approximately 9 ft (2.7 m) below the surface in early June 1983. Turtles may be more common in the upper water column during the spring, but if they are foraging for preferred prey, they are periodically near the bottom, and thus subject to entanglement in leaders more than 9 ft (2.7 m) below the surface. Sea turtle entanglements have been documented in large mesh leaders and are likely to occur in stretched mesh greater than 16 inches (40.6 cm). Without adequate support that these measures will reduce sea turtle entanglement in the stringers themselves and in the mesh dropped more than 9 ft (2.7 m) below mean low water, the specific benefits to sea turtles remain unclear. A detailed description and review of all of the components of this plan are included in the EA/RIR.

Comment 14: One commenter disagreed with NMFS' assumption that fishermen are using the minimum leader mesh size that is operational, and indicated that mesh in compliance with the regulations will not be available by May 8.

Response: NMFS explained in the EA/RIR that, because the data used for the economic analysis did not give the exact location of pound nets, it would assume for the purposes of the impact analysis that fishermen were using the minimum leader mesh size that they believed to be operational. The EA/RIR then described the economic impacts based on that assumption, which provided for a worst-case analysis. However, the EA/RIR also indicated that another scenario is possible; namely that fishermen could switch to a smaller leader mesh size and remain operational. The EA/RIR also described the impacts based on that different assumption. This regulation is necessary to conserve listed sea turtles, so for the regulation to be effective at reducing sea turtle mortality and preventing entanglement in large mesh and stringer pound net leaders, all pound net leaders, in the geographical area affected by the restriction, must have mesh smaller than 12 inches (30.5 cm) stretched mesh during the restricted period or fishermen must remove their non-compliant leaders.

Observer Coverage/Monitoring Comments

Comment 15: Two commenters supported the framework in the proposed rule, which includes monitoring the smaller mesh pound net leaders and the implementation of additional restrictions if necessary.

Response: NMFS believes that prohibiting leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers will reduce sea turtle entanglements and subsequent spring strandings. The framework monitoring program will document any sea turtle interactions with smaller leader mesh sizes, which will provide information beneficial for future management, both in Virginia and potentially in other states. Should the monitoring of pound net leaders during May and June document turtle entanglement, under the framework mechanism NMFS may impose additional restrictions during the gear restriction period on an expedited basis. The gear restriction as proposed and any additional restrictions could be extended by NMFS for a period not to exceed 30 days after June 30, or not beyond July 30.

Comment 16: Four commenters recognized the need for NMFS to continue monitoring the sea turtle stranding situation in Virginia and supported increased observer coverage on the other spring fisheries in the Virginia Chesapeake Bay, nearshore, and offshore waters.

Response: NMFS will continue to closely monitor sea turtle stranding levels and other fisheries active in Virginia waters. While NMFS believes that pound nets contribute to the high spring sea turtle strandings, NMFS also recognizes that other fisheries may contribute to some of the annual sea turtle stranding event in Virginia and is committed to appropriately addressing the mortality sources. The NMFS 2002 monitoring program includes observer coverage of the large mesh and small mesh gillnet fisheries in offshore Virginia and Chesapeake Bay waters; alternative platform observer coverage of the large mesh gillnet black drum and sandbar shark fisheries; offshore and inshore aerial surveys to record sea turtle distribution, sea surface temperature, and commercial fishing gear; investigations into sea turtle interactions with the whelk and crab pot fisheries; and pound net monitoring. Coverage of the pound net fishery will include alternative platform observer coverage of pound net leaders, pound net leader monitoring using side scan sonar and video, and aerial monitoring of the pound net fishery. Additionally, NMFS will continue to evaluate interactions with other fisheries not previously considered that may contribute to sea turtle strandings.

Comment 17: Two commenters expressed their concern with the level of 2001 observer coverage on fisheries in the Virginia area (e.g., on large mesh and small mesh gillnet fisheries), and felt that more observer coverage was necessary.

Response: NMFS believes the coverage on these fisheries in 2001 was sufficient to monitor the take of sea turtles. The federally managed monkfish large mesh gillnet fishery (approximately 10–12 inch (25.4–30.5 cm) mesh) had approximately 41 percent observer coverage in waters off Virginia from May 1 until it stopped operating off Virginia on May 29 when

the fleet moved northward. In Virginia, 107 monkfish trips were observed, and one dead and two live loggerhead turtles were incidentally captured in this fishery. The state water black drum large mesh (approximately 10–14 inch (25.4–35.6 cm) mesh) gillnet fishery had approximately 8 percent observer coverage during May and June, and no turtle takes were observed. Twenty-two trips targeting both black drum and sandbar shark were conducted from May 15 to June 6. The amount of small mesh (smaller than 6 inch (15.2 cm) mesh) gillnet effort occurring in the Chesapeake Bay waters during May and June appears to be relatively minimal. NMFS observed 2 percent of the Atlantic croaker fishery and 12 percent of the dogfish fishery during May and June; no turtle takes were observed.

While 100-percent observer coverage was intended for the Federal monkfish fishery in 2001 (note that the percent coverage off of North Carolina was higher than off of Virginia), the limited number of observers and increase in the number of vessels fishing for monkfish resulted in less than 100–percent coverage. NMFS intends to continue observer coverage in these gillnet fisheries during 2002 to document any sea turtle takes that may ensue.

Comment 18: One commenter stated that aerial surveys are needed from mid-April through June to identify the active spring fisheries and determine the number of participants in these fisheries.

Response: In 2001, aerial surveys in both offshore and inshore Virginia waters were conducted to document sea turtle distribution and commercial fishing gear. During May and June, offshore aerial surveys from the beach out to the shelf break were conducted from the Virginia/North Carolina border to the Virginia/Maryland border. Inshore aerial surveys were flown from late May to October, surveying transect lines from the mouth of the Chesapeake Bay to the Virginia/Maryland border. NMFS considered the results of these aerial surveys (e.g., observations of fishing activity) in the development of the 2001 temporary rule on the Virginia pound net fishery (66 FR 33489, June 22, 2001), as well as this action. NMFS will conduct similar aerial surveys in May and June 2002.

Comment 19: One commenter suggested that NMFS work with the VMRC, VIMS, and the Virginia Department of Game and Inland Fisheries (VA DGIF), on the development of monitoring plans.

Response: NMFS has been in close coordination with VMRC and VIMS on the development of the pound net monitoring plan and schedule, as well as the aerial survey flights and observer coverage on other spring fisheries in Virginia. To date, NMFS has had limited contact with the VA DGIF, as their role in managing the fisheries that may be resulting in sea turtle mortality was not previously defined.

Changes from Proposed Rule

Based on review of the comments received on the proposed rule and on its own review, NMFS has added two new paragraphs in the interim final rule. One requires that when a turtle is captured live and uninjured in the pound, fishers in the Virginia pound net fishery notify NMFS within 24 hours of returning from the trip. This provision also requires fishers to immediately notify NMFS and the appropriate rehabilitation or stranding network, as determined by NMFS, if a turtle is captured live but injured or if a turtle is entangled or captured dead in the pound net gear. The second requires that pound net fishing operations must be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. It also provides that all NMFS-approved observers will report any violations of this section, or other applicable regulations and laws, and that information collected by observers may be used for law enforcement purposes.

The interim final rule also does not include the proposed revision to 50 CFR 224.104, which provided NMFS' proposed policy determination that no civil penalties will be sought against those who are in compliance with the gear restrictions and other requirements above, but that nevertheless incidentally take an endangered sea turtle. While NMFS has the discretion to make that determination, NMFS at this time chooses not to issue a regulatory statement to that effect.

Review and Request for Additional Comments

NMFS continues to request public comments on this interim final rule to assist in the development of a final rule on Virginia pound nets and perhaps a management scheme for pound nets in other states via NMFS' Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (66 FR 39474, July 31, 2001).

Classification

This interim final rule has been determined to be significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(d)(3) not to delay the effective date of this interim final rule for 30 days. Such a delay would be contrary to the public interest because sea turtles typically migrate into Virginia waters in May, and at this time, they would likely be subject to entanglement in pound net leaders and potential subsequent mortality, unless this rule is in effect immediately (see response to Comment 3). Any delay in the effective date of this interim final rule would prevent NMFS from meeting its obligations under the ESA to prevent harm to sea turtles.

NMFS has prepared a final regulatory flexibility analysis (FRFA) that describes the economic impact this interim final rule would have on small entities. The FRFA is as follows: This rule prohibits pound net leaders with stretched mesh 12 inches (30.5 cm) or greater and leaders with stringers, requires year round reporting and monitoring, and provides a mechanism for modifying the restrictions from May 8 to June 30, and for extending the original or additional restrictions through July 30. The purpose is to prevent entanglement of threatened and endangered sea turtles in pound net leaders. This action is necessary to conserve listed sea turtles, help promote their recovery, and aid in the enforcement of the ESA.

The fishery affected by this interim final rule is the Virginia pound net fishery in the Chesapeake Bay. According to the 2001 VMRC survey data, of the 160 pound net licenses issued in Virginia, where one license is assigned to each pound net, 72 licenses are fishing in the waters potentially affected by this proposed (67 FR 15160, March 29, 2002) rule. According to VMRC data from 1999 to 2001, 27 fishermen were fishing approximately 64 pound nets from May 8 to June 30. Prohibiting the use of all pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers from May 8 to June 30 would potentially affect approximately 11 fishermen fishing approximately 24 pound nets. If pound net leaders greater than or equal to 8 inches (20.3 cm) are prohibited, approximately 13 fishermen fishing approximately 31 pound nets would be affected. If all pound net leaders regardless of mesh size are prohibited, 27 fishermen fishing approximately 64 pound nets would be affected.

This interim final rule prohibits pound net leaders with 12 inches (30.5 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30, and provides a mechanism for extending and/or modifying the restrictions. This interim final rule

employs the best available information on sea turtle and pound net leader interactions to reduce sea turtle entanglement and strandings, while minimizing the impacts to the pound net industry. Four alternatives to the interim final rule have been considered. Given the inability to provide a quantitative analysis of these regulatory alternatives, the alternatives were considered with respect to mitigating the known costs on small entities while providing sea turtle protection. One alternative being status quo would not provide any protection to sea turtles, but would not have any economic consequences at least in the short term. No action now may lead to more severe and costly action to protect sea turtles in the future. The non-preferred alternative 1 would have prohibited pound net leaders with 8 inches (20.3 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. Compared to this interim final rule's restrictions, the non-preferred alternative 1 may not necessarily have provided greater sea turtle protection, and the industry costs would have been higher. The level of interaction between sea turtles and pound net leaders with between 8 inches (20.3 cm) and 12 inches (30.5 cm) stretched mesh has not been adequately documented in Virginia waters. The non-preferred alternative 2 that would have prohibited all pound net leaders from May 8 to June 30, would not necessarily have provided the most protection to sea turtles, but it would have been the most costly to the industry. The level of interaction between sea turtles and pound net leaders with less than 12 inches (30.5 cm) stretched mesh has not been adequately documented in Virginia waters. Finally, the non-preferred alternative 3 would have prohibited pound net leaders with greater than 16 inches (40.6 cm) stretched mesh, and would have required fishermen to drop the mesh of those leaders using stringers to 9 ft (2.7 m) below mean low water and to space stringer lines at least 3 ft (0.9 m) apart, for approximately a three and a half week period beginning on May 15. This alternative would have been the least burdensome to industry, but would have offered the lowest expected protection to sea turtles, with the exception of the no action alternative. Without adequate support to ensure that sea turtles would not have become entangled in the allowable leaders of this alternative, the benefits of this alternative to sea turtles are uncertain.

No comments were received on the initial regulatory flexibility analysis.

New § 223.206(d)(2)(v)(C) requires a collection of information which is not approved pursuant to the PRA. This section will only be effective upon receipt of that approval and publication of that approval in the **Federal Register**.

A formal consultation pursuant to section 7 of the ESA was conducted on this action. The biological opinion on this action concluded that NMFS' sea turtle conservation measures for the Virginia pound net fishery, may adversely affect but are not likely to jeopardize the continued existence of the loggerhead, leatherback, Kemp's ridley, green, or hawksbill sea turtle, or shortnose sturgeon. An incidental take statement was issued for this action. Copies of this biological opinion are available (see **ADDRESSES**).

This interim final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the Governor of Virginia on April 2, 2002. No comments on the federalism implications of the proposed action were received in response to the April 2002 letter.

Dated: June 11, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR parts 222 and 223, are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701

2. In § 222.102, the definition of ''Pound net leader'' is added in alphabetical order to read as follows:

§ 222.102 Definitions.

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.205, paragraphs (b)(14) and (b)(15) are revised and paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(2)(v) regarding pound net leaders; or

(16) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

* * * * *

3. In § 223.206, paragraph (d)(2)(v) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(v) *Gear requirement—pound net leaders*—(A) *Restrictions on pound net leaders.* During the time period of May 8 through June 30 of each year, any pound net leader in the waters described in paragraph (d)(2)(v)(B) of this section must have a mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any pound net leader with stretched mesh measuring 12 inches (30.5 cm) or greater or any pound net leader with stringers must be removed from the waters described in paragraph (d)(2)(v)(B) of this section prior to May 8 of each year and may not be reset until July 1 of each year unless that date is extended by the AA pursuant to paragraph (d)(2)(v)(E) of this section.

(B) *Regulated waters.* The restrictions on pound net leaders described in paragraph (d)(2)(v)(A) of this section

apply to the following waters: the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

(C) *Reporting requirement.* At any time during the year, if a turtle is taken live and uninjured in a pound net operation, in the pound or in the leader, the operator of vessel must report the incident to the NMFS Northeast Regional Office, (978) 281–9388 or fax (978) 281–9394, within 24 hours of returning from the trip in which the incidental take occurred. The report shall include a description of the turtle's condition at the time of release and the measures taken as required in paragraph (d)(1) of this section. At any time during the year, if a turtle is taken in a pound net operation, and is determined to be injured, or if a turtle is captured dead, the operator of the vessel shall immediately notify NMFS Northeast Regional Office and the appropriate rehabilitation or stranding network, as determined by NMFS Northeast Regional Office.

(D) *Monitoring.* Pound net fishing operations must be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for law enforcement purposes.

(E) *Expedited modification of restrictions and effective dates.* From May 8 to June 30 of each year, if NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(2)(v)(A) of this section on pound net leaders in the waters identified in paragraph (d)(2)(v)(B) of this section, the AA may issue a final rule modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle strandings will likely continue beyond June 30, the AA may issue a final rule extending the effective date of the restrictions, including any additional restrictions imposed under this subparagraph, for an additional 30 days, but not beyond July 30, to protect threatened sea turtles.

* * * * *

[FR Doc. 02–15182 Filed 6–12–02; 3:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 116
Monday, June 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RAILROAD RETIREMENT BOARD

20 CFR Parts 218, 220, and 225

RIN 3220–AB54

Retirement Age

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its regulations to update the references regarding age required for eligibility for an annuity and for the application of work deductions.

Full retirement age is no longer age 65, but instead ranges from age 65 for those born before 1938 to age 67 for those born in 1960 or later. The Board proposes to amend its regulations to replace obsolete references to ''age 65'' with a reference to ''retirement age''.

DATES: In order for us to consider your comments on these specific proposals, the Board must receive them by August 16, 2002.

ADDRESSES: Submit comments in writing to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: For information specifically about these proposed rules, contact Michael C. Litt, General Attorney, Office of General Counsel, Railroad Retirement Board, (312)751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 106 of the Railroad Retirement Solvency Act of 1983, Public Law 98–76, amended the Railroad Retirement Act to replace references to ''age 65'' with ''retirement age (as defined in section 216(l) of the Social Security Act).'' Section 216(l) of the Social Security Act defines ''retirement age'' as follows: with respect to an individual who attains ''early retirement age'' before January 1, 2000, 65 years of age. ''Early retirement age'' is defined in the case of old-age, wife's or husband's insurance benefits, as age 62. With respect to individuals who attain early retirement age after December 31, 1999, the retirement age gradually increases.

The Board proposes to issue regulations that replace references to ''age 65'' with the phrase ''retirement age'' in order to conform the regulations to the above-described amendment.

Proposed Amendments

The Board proposes to amend parts 218, 220, and 225 to remove the words ''age 65'' and add in their place the words ''full retirement age''.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects

20 CFR Part 218

Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 220

Railroad retirement.

20 CFR Part 225

Railroad retirement.

For the reasons stated in the preamble, the Railroad Retirement Board proposes to amend 20 CFR, chapter II, parts 218, 220, and 225 as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

1. The authority citation for part 218 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

§§ 218.9, 218.12, 218.13, 218.16, 218.17, 218.36, 218.40, 218.43, and 218.44 [Amended]

2. In 20 CFR part 218, remove the words ''age 65'' wherever they appear and add in their place the words ''full retirement age''.

a. § 218.9(a)(2);
b. § 218.12(b)(2)(ii);
c. § 218.13(b)(1)(ii), and § 218.13(b)(2)(ii);
d. § 218.16(b)(2)(ii);
e. § 218.17(b)(2)(ii);
f. § 218.36(a)(3), and § 218.36(b);
g. § 218.40(c)(4);
h. § 218.43(b)(3), and § 218.43(c)(6);
i. § 218.44(b)(3), and § 218.44(c)(6).

PART 220—DETERMINING DISABILITY

3. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

§ 220.161 [Amended]

4. Amend § 220.161 by removing the words ''becomes 65 years old and the disability annuity is converted to an age annuity.'', and add in their place the words ''attains retirement age and the disability annuity is converted to a full age annuity.''

§ 220.176 [Amended]

5. Amend § 220.176 by removing the words ''age 65'', and adding in their place the words ''full retirement age''.

PART 225—PRIMARY INSURANCE AMOUNT DETERMINATIONS

6. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

§ 225.2 [Amended]

7. Amend § 225.2 by removing the wording ''216(I)'' from the definition of ''Base Years'', and adding in its place ''216(l)''.

§ 225.30 [Amended]

8. Amend § 225.30(a) by removing the words ''age 65'', and adding in their place the words ''full retirement age''.

§ 225.34 [Amended]

9. Amend § 225.34 by:

a. Removing the words ''age 65'' from paragraph (a)(1), and adding in their place the words ''full retirement age'';

b. Revising paragraph (b)(3); and

c. Adding a new paragraph (b)(4).

§ 225.34 How the amount of the DRC is figured.

* * * * *

(b) * * *

(3) Employee attains age 65 in 1990 and before 2003. (i) The rate of the DRC (one-fourth of one percent) is increased by one-twenty-fourth of one percent in each even year through 2002. Therefore, depending on when the employee attains age 65, the DRC percent will be as follows:

Year employee attains age 65	Delayed retirement credit percent
1990	7/24 of 1%.
1991	Do.

Year employee attains age 65	Delayed retirement credit percent
1992	1/3 of 1%.
1993	Do.
1994	3/8 of 1%.
1995	Do.
1996	5/12 of 1%.
1997	Do.
1998	11/24 of 1%.
1999	Do.
2000	1/2 of 1%.
2001	Do.
2002	13/24 of 1%.

(ii) The delayed retirement credit equals the appropriate percent of the PIA times the number of months in which the employee is age 65 or older and for which credit is due.

(4) Employee attains full retirement age in 2003 or later. The rate of the DRC (one-fourth of one percent) is increased by one-twenty-fourth of one percent in each even year through 2008. Therefore, depending on when the employee attains full retirement age, the DRC percent will be as follows:

Year employee attains full retirement age	Delayed retirement credit percent
2003	13/24 of 1%.
2004	7/12 of 1%.
2005	Do.
2006	5/8 of 1%.
2007	Do.
2008 and later	2/3 of 1%.

* * * * *

Dated: June 10, 2002.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–15104 Filed 6–14–02; 8:45 am]

BILLING CODE 7905–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 02–1]

RIN 3014–AA26

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Public Rights-of-Way

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of availability of draft guidelines.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its web site for public review and comment draft guidelines which address accessibility in the public right-of-way. The draft guidelines were recommended by an ad hoc committee of the Access Board after consideration of the recommendations proposed by an advisory committee comprised of representatives from disability organizations, public works departments, transportation and traffic engineering groups, design professionals and civil engineers, Federal agencies, and standards-setting bodies. Comments will be accepted on the draft guidelines and the Access Board will consider those comments prior to issuing a notice of proposed rulemaking. The Access Board will hold an informational meeting on the draft guidelines in Portland, Oregon on October 8, 2002.

DATES: Comments on the draft guidelines must be received by October 28, 2002. The Access Board will hold an informational meeting on October 8, 2002 from 8:30 a.m. until 12:30 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Informational Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *windley@access-board.gov.* Comments sent by e-mail will be considered only if they contain the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days. The informational meeting on October 8, 2002 will be held at the Hilton Portland, 921 SW Sixth Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, suite 1000, Washington DC 20004–1111. Telephone number (202) 272–0025 (voice); (202) 272–0082 (TTY). Electronic mail address: *windley@access-board.gov.*

SUPPLEMENTARY INFORMATION: In 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) established the Public Rights-of-Way Access Advisory Committee (Committee) to make recommendations on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Committee was comprised of representatives from disability organizations, public works departments, transportation and traffic engineering groups, design professionals and civil engineers, pedestrian and bicycle organizations, Federal agencies, and standard-setting bodies. The Committee met on five occasions between December, 1999 and January, 2001. On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community.'' The Committee's report provided recommendations on access to sidewalks, street crossings, and other related pedestrian facilities and addressed various issues and design constraints specific to public rights-of-way. The report is available on the Access Board's Web site at *www.access-board.gov/prowac/commrept/index.htm* or can be ordered by calling the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The report is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk.)

The Access Board convened an ad hoc committee of Board members to review the Committee's recommendations. After reviewing the report in detail, the Board's ad hoc committee prepared recommendations for guidelines addressing accessibility in the public right-of-way. The Access Board is making the recommendations of the ad hoc committee available in the form of draft guidelines for public review and comment prior to issuing a notice of proposed rulemaking. The draft guidelines along with supplementary information have been placed in the rulemaking docket (Docket No. 02–1) for public review. The draft guidelines and supplementary information are also available on the Access Board's Internet site (*http://www.access-board.gov/rowdraft.htm*). You may also obtain a copy of the draft guidelines and supplementary information by contacting the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The documents are available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk.) The Board will issue a notice of proposed rulemaking following a review of comments received.

In addition to welcoming written comments, the Board will hold an informational meeting to provide the public with an additional opportunity to

provide input on the draft guidelines. Interested members of the public are encouraged to contact the Access Board at (202) 272–0011 (voice) or (202) 272–0082 (TTY) to preregister to attend the informational meeting.

James J. Raggio,

General Counsel.

[FR Doc. 02–15117 Filed 6–14–02; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7229–2]

Oregon: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Oregon has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Oregon's application and made the preliminary decision that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: EPA will accept written comments which are received at the address below on or before July 17, 2002.

ADDRESSES: Send written comments to Lynn Williams, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA 98101, phone, (206) 553–2121. You can examine copies of the materials submitted by Oregon during normal business hours at the following locations: EPA Region 10 Library, 1200 Sixth Avenue, Seattle WA 98101, phone, (206) 553–1289; and at the Oregon Department of Environmental Quality, Land Quality Division, 811 SW Sixth Avenue, Portland, OR 97204. The Oregon contact is Gary Calaba at (503) 229–6534.

FOR FURTHER INFORMATION CONTACT: Lynn Williams, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA, 98101; (206) 553–2121. For general information available on the authorization process, *see* EPA's Web site at: *http://www.epa.gov/epaoswer/hazwaste/state/rcra.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the authorized State hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has made the preliminary determination that Oregon's authorized hazardous waste program, as revised, meets the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Oregon final authorization to operate its hazardous waste program with the changes described in the authorization application and as described in this proposed rule. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

Oregon's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the limitations of this authorization. Oregon's authorized program does not extend to Indian country. EPA retains jurisdiction and authority to implement RCRA over Indian country and over trust lands.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Oregon, including issuing permits or portions of permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Oregon Is Authorized for These Changes?

If Oregon is authorized for these changes, a facility in Oregon subject to RCRA will have to comply with the authorized State program requirements and with the federal HSWA provisions for which the State is not authorized in order to comply with RCRA. Oregon has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this proposed rule once a final rulemaking becomes effective. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Oregon's program will be authorized are already effective under State law.

D. What Happens if EPA Receives Comments That Oppose This Action?

If the EPA receives significant written comments on this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Oregon Previously Been Authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the State's hazardous waste management program. EPA granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); and October 10, 1995, effective December 7, 1995 (60 FR 52629).

F. What Changes Are We Proposing to Oregon's Authorized Program?

EPA is proposing to authorize revisions to Oregon's authorized program described in Oregon's official program revision application, submitted to EPA on February 4, 2002, and deemed complete by EPA on March 7, 2002. We have made a preliminary determination that Oregon's hazardous waste program revisions, as described in this proposed rule, satisfy the requirements necessary to qualify for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized. The Oregon Hazardous Waste Management Program, which was administered by the Oregon Department of Environmental Quality (DEQ), Waste Prevention and Management Division, reorganized effective October 1, 2001 and is now administered by the DEQ Land Quality Division. This rule proposes to authorize this reorganization.

The following table, Table 1, identifies equivalent and more stringent State regulatory analogues to the Federal regulations for those regulatory revisions Oregon is seeking authorization for. All of the referenced analogous State authorities were legally adopted and effective as of July 21, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]

Description of Federal requirements (CL# [2])	Federal Register	Analogous State authority (OAR 340–***)
Availability of Information		-100–0003(2), –100–0005(a)–(5), 105–0012.
User Oil Filter Exclusion, Technical Corrections (CL 107).	57 FR 29220, 7/1/92	–100–0002; –101–0001.
Testing and Monitoring Activities (CL 126)	58 FR 46040, 8/31/93	–100–0002; –101–0001;–104–0001; –1005–0001.
Boilders & Industrial Furnaces, Administrative Stay & Interim Standards for Bevill Residues (CL 127).	58 FR 59598, 11/9/93	–100–0002.
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (CL 128).	59 FR 458, 1/4/94	–100–0002; –101–0001.
Revision of Conditional Exemption for Small Scale Treatability Studies (CL 129).	59 FR 8362, 2/18/94	–100–0002; –101–0001.
Recycled Used Oil Management Standards; Technical Amendments and Corrections II (CL 130).	59 FR 10550, 3/4/94	–100–0002; –111–0000(2), –111–0010.
Recordkeeping Instructions, Technical Amendment (CL 131).	59 FR 13891, 3/24/94	–100–0002; –104–0001.
Letter of Credit Revision (CL 133)	59 FR 29958, 6/10/94	–100–0002; –104–0001, 104–0151.
Corrections of Beryllium Powder (P015) Listing (CL 134).	59 FR 31551, 6/20/94	–100–0002; –101–0001, –101–0033.
Recovered Oil Exclusion (CL 135)	59 FR 38536, 7/28/94	–100–0002; –101–0001.
Removal of the Conditional Exemption for Certain Slag Residues (CL 136).	59 FR 43496, 8/24/94	–100–0002; –101–0001.
Carbamate Production Identification and Listing of Hazardous Waste (CL 140).	60 FR 7824, 2/9/95; as amended at 60 FR 19165, 4/17/95, and at 60 FR 25619, 5/12/95.	–100–0002; –101–0033.
Universal Waste Rule: General Provisions (CL 142A)[3].	60 FR 25492, 5/11/95	–100–0002; –102–0011(e); –113–0000, –113,0020, 113–0020(1)–(2), –113,0030, –113–0030(3)(a), –113–0040, –113–0040(2), –113–0040(2)(b), –113–0040(2)(b)(B)(v), –113–0040(3)(a)–(b), –113–0040(4), –113–0050.
Universal Waste Rule: Specific Provisions for Batteries (CL 142B).	60 FR 25492, 5/11/95	–100–0002; –113–0000, –113–0020, –113–0030, –113–0040.
Universal Waste Rule: Specific Provisions for Pesticides (CL 142C).	60 FR 25492, 5/11/95	–100–0000; –113–0020, –113–0000, –113–0070, –113–0030, –113–0040.
Universal Waste Rule: Specific Provisions for Thermostats (CL 142 D).	60 FR 25492, 5/11/95	–100–0002; –113–0020, –113–0000, –113–0030, –113–0040.
Universal Waste Rule: Petition Provisions to add a new Universal Waste (CL 142 E)[3].	60 FR 25492, 5/11/95	–100–0002; –113–0000, –113–0060.
Liquids in Landfills III (CL 145)	60 FR 35703, 7/11/95	–100–0002.
RCRA Expanded Public Participation (CL 148)	60 FR 63417, 12/11/95	–100–0002; –106–0001; –105–0001, 105–0010, 105–0014.
Land Disposal Restrictions Phase III—Decharacterized Wastewaters Carbamate Waste, and Spent Potliners (CL 151).	61 FR 15566, 4/8/96	–100–0002; –102–0011(2)(e).
Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D (CL 153).	61 FR 34252, 7/1/96	–100–0002, –101–0001.
Consolidated Organic Air Emissions standards for Tanks Surface Impoundments, and Containers (CL 154).	59 FR 62896, 12/6/94; as amended 5/19/95 (60 FR 26828), 9/29/95 (60 FR 50426), 11/13/95 (60 FR 56952), 2/9/96 (61 FR 4903), 6/5/96 (61 FR 28508), 11/25/96 (61 FR 69932).	–100–0002; –104–0001; 102–0034; –101-0001.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Description of Federal requirements (CL# [2])	Federal Register	Analogous State authority (OAR 340–***)
Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right–of–Ways on Contiguous Properties (CL 156) [3].	62 FR 6622, 2/12/97	–100–0002, –101–0010; –101–0001; –102–0010; –103–0010; –104–0001, 104–1201, 104–1201(2), (3); –105–0001, –105–0041 (3),(4).
Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Waste, Paperwork Production and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions (CL 157).	62 FR 25998, 5/12/97	–100–0002; –101–0001, –101–0004.
Testing and Monitoring Activities Amendment III (CL 158).	62 FR 32452, 6/13/97	–100–0002; –104–0001.
Conformance with Carbamate Vacatur (CL 159)	62 FR 32974, 6/17/97	–100–0002; –101–0001.
Emergency Revision of Carbamate Land Disposal Restrictions (CL 161).	62 FR 45568, 8/28/97	–100–0002.
Clarification of Standards for Hazardous Waste LDR Treatment Variances (CL 162).	62 FR 64504, 12/5/97	–100–0002.
Organic Air Emission standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment (CL 163).	62 FR 64636, 12/8/97	–100–0000; –104–0001.
Kraft Mill Stream Stripper Condensate Exclusion (CL 164).	64 FR 18504, 4/15/98	–100–0002; –101–0004.
Recycled Used Oil Management Standards; Technical Correction and Clarification (CL–166)[3].	63 FR 24963, 5/6/98	–100–0002; –111–0000 (2), –111–0032, –111–0050.
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes (CL 167A).	63 FR 28556, 5/26/98	–100–0002; –102–0011(2)(e).
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions (CL 167B).	63 FR 28556, 5/26/98	–100–0002.
Land Disposal Restrictions Phase IV—Corrections (CL 167 C).	63 FR 28556, 5/26/98; as amended 6/8/98 (63 FR 31260).	–100–0002.
Bevill Exclusion Revisions and Clarifications (CL 167E).	63 FR 28556, 5/26/98	–100–0002; –101–0001, –101–0004.
Exclusion of Recycled Wood Preserving Wastewaters (CL 167F).	63 FR 28556, 5/26/98	–100–0002; –101–0004.
Hazardous Waste Combustors; Revised Standards (CL 168).	63 FR 33782, 6/19/98	–101–0002, –101–0001, –101–0004.
Petroleum Refining Process Wastes (CL 169) ..	63 FR 42110, 8/6/98	–100–0002; –101–0001; –102–0010; –101–0004.
Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment (CL 170).	63 FR 46332, 8/31/98	–100–0002.
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production (CL 171).	63 FR 47410, 9/4/98	–100–0002.
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags (CL 172).	63 FR 48124, 9/9/98	–100–0002.
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule (CL 173).	63 FR 51254, 9/24/98	–100–0002.
HWIR—Media (CL 175)[3]	63 FR 65874, 11/30/98	–100–0010, –100–0002; –101–0004(3); –105–0003, –105–0115.
Universal Waste Rule—Technical Amendments (CL 176).	63 FR 71225, 12/24/98	–100–0002; –113–0000. –113–0020.
Organic Air Emission Standards: Clarification and Technical Amendments (CL 177).	64 FR 3382, 1/21/99	–100–0002; –102–0034; –104–0001.
Petroleum Refining Process Wastes—Leachate Exemption (CL 178).	64 FR 6806, 2/11/99	–100–0002; –101–0001, –101–0004.
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards (CL 179).	63 FR 25408, 5/11/98	–100–0002; –101–0001; –102–0010; –101–0004; –102–0034.
Test Procedures for Analysis of Oil and Grease and Non–Polar Material (CL 180).	64 FR 26315, 5/14/99	–100–0002.
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps (CL 181).	64 FR 36466, 7/6/99	–100–0002; –113–0000, –113–0020, –113–0030, –113–0040, –113–0060.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Description of Federal requirements (CL# [2])	Federal Register	Analogous State authority (OAR 340–***)
Hazardous Air Pollutants Standards for Combustors (CL 182).	64 FR 52828, 9/30/99, as amended 11/19/99 (64 FR 63209).	–100–0002; –101–0001; –104–0001; –105–0001.
Land Disposal Restrictions Phase IV—Technical Corrections (CL 183).	64 FR 56469, 19/20/99	–100–0002; –101–0001; –102–0010, –102–0034.
Accumulation Time for Waste Water Treatment Sludges (CL 184).	65 FR 12378, 3/8/00	–100–0002; –102–0010.
Organobromine Production Waste Vacatur (CL 185).	65 FR 14472, 3/17/00	–100–0000; –101–0001.

[1] For further discussion on where the revised State rules differ from the Federal rules refer to Section G. below, the authorization revision application, and the administrative record for this proposed rule.

[2] CL # (Checklist) generally reflects changes made to the Federal regulations pursuant to a particular FEDERAL REGISTER notice and EPA publishes these checklists as aids for States to use for the development of their authorization application. *See* EPA's RCRA State Authorization Web page at *http://www.epa.gov/epaoswer/hazwaste/state/.*

[3] State rule contains some more stringent provisions. For identification of more stringent State provisions refer to the authorization revision application and the Attorney General's statement for this proposed rule.

G. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Oregon proposed to its authorized program and the Federal regulations. Not all program differences are discussed in this section because, although Oregon incorporates many Federal rules by reference, the State also writes its own version of many of the federal hazardous waste rules. This section discusses certain rules where EPA is making a preliminary determination that the State program is more stringent and will be authorized, rules where the State program is broader in scope, and rules where the State program is less stringent than the federal requirements. The State will not be authorized for the less stringent rules or broader in scope rules. Less stringent State rules and broader in scope rules do not supplant federal regulations. Persons should consult the table referenced above for the specific State regulations which EPA proposes to authorize.

Certain portions of the federal program are not delegable/authorizable to the States because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. One such matter pertains to import/export functions. EPA does not delegate/authorize import/export functions. Under the RCRA regulations found in 40 CFR part 262, Standards for Generators, EPA will continue to implement requirements for import/export functions. EPA does not delegate/authorize certain of the Federal Land Disposal Restriction requirements, 40 CFR Part 268, because of the national concerns that must be examined when decisions are made under the following federal regulations; these include: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—''No migration'' petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)–(g)—general treatment standard variances. Oregon's program does not include these requirements. EPA will continue to implement these requirements under EPA's HSWA authority.

Areas Where the State Program Is More Stringent

States are allowed to seek authorization for State requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a State's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent preliminary finding made by EPA, but persons can locate such sections by consulting the Table, referenced above, as well as by reviewing the authorization application.

Oregon has enacted several requirements under its hazardous waste management program for which EPA has made the preliminary determination that the requirements are more stringent than the standards of the Federal RCRA program set forth in 40 CFR parts 260–279.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. Oregon made such a change to its rules for availability of information. The State program requirement at OAR 340–100–0003, which replaces the federal requirements at 40 CFR 260.2 for availability of information, is preliminarily determined to be more stringent than the federal program because State regulations require additional justification for trade secret claims and establish a time frame of 15 to 30 days for clarifying claims. OAR 340–105–0012 was revised to require identical trade secret claims substantiation for permits as required by OAR 340–100–0003.

The State program regulation at OAR 340–101–0004(3) is preliminarily determined to be more stringent than the federal program at 40 CFR 261.4(g), Dredged Materials, in that the State program deletes 40 CFR 261.4(g) from its incorporation of the federal regulations by reference. Consequently, the State program does not exclude dredged material from regulation as a solid waste subject to a hazardous waste determination. Because the dredged materials exclusion at 40 CFR 261.4(g) replaced existing regulations that subjected such materials to a hazardous waste determinations, State programs were allowed the option of choosing to change their regulations to include the dredged materials exclusion or not. Those that selected not to include the exclusion would be more stringent than the federal program because EPA promulgated the dredged materials exclusion as a less stringent requirement.

The State program regulation at OAR 340–102–0011(3) is preliminarily determined to be more stringent than the federal program regulation at 40 CFR 262.11 because generators of hazardous waste in Oregon must keep documentation of ''knowledge of process'' hazardous waste determinations for at least three years.

The State program at OAR 340–102–0034(2) is preliminarily determined to be more stringent than the federal regulation at 40 CFR 262.34 as an additional requirement, which does not replace or supersede the requirement to have a permit in the event a generator fails to satisfy the 40 CFR 262.34 conditions.

The State program at OAR 340–102–0040, replacing the requirements of 40 CFR 262.40(b), is preliminarily determined to be more stringent than the federal program because the State program requires small quantity generators both to report waste generated (OAR 340–102–0041) and to maintain copies of all reports on waste generated for three years.

The State program is preliminarily determined to be more stringent at OAR 340–104–0001(6) than the federal program with respect to facilities receiving hazardous waste from offsite because the State program requires that facilities receive a final waste permit before managing offsite hazardous wastes. The federal program allows facilities with interim status to receive offsite hazardous waste.

The State program is preliminarily determined to be more stringent than the federal program with respect to the federal HWIR media rule because the State regulations do not allow for the use of Remedial Action Plans (RAPs) as found in the federal requirements at 40 CFR part 270, subpart H. The State regulations at OAR 340–105–0003 delete from their incorporation by reference of the federal regulations those regulations allowing for RAPs. Oregon inadvertently incorporated 40 CFR 270.230(e)(1) by reference but does not seek authorization for the provision.

The State program is preliminarily determined to be more stringent than the federal program with respect to the federal Post Closure (PC) rule (63 FR 56710) because the State program specifically excluded the PC rule from its incorporation by reference of the federal regulations at OAR 340–100–0002.

The State program is preliminarily determined to be more stringent in certain places than the federal regulations promulgated in EPA's Military Munitions Rule (62 FR 6622). With respect to the hazardous waste management system in Oregon, the State hazardous waste program added definitions for ''demilitarization'' and ''demilitarization residue'' at OAR 340–100–0010(2)(f) and (g) in Oregon's analog to 40 CFR 260.10. These definitions are specific to the processes and activities at the Umatilla Chemical Depot and are preliminarily determined to be more stringent than the federal program.

With respect to chemical agent munitions and chemical agent bulk items in storage, the State program identifies such chemical agent munitions and chemical agent bulk items in storage as characteristic and/or listed hazardous waste at OAR 340–101–0030, referencing listings for blister agents and nerve agents at OAR 340–102–0011(c)(A) and (B). In the Military Munitions Rule, at 62 FR 6633, EPA said that States could be more stringent than the federal program for chemical agents and munitions.

Oregon's analog to 40 CFR 264.1201, OAR 340–104–1201, design and operating standards for munitions storage, is preliminarily determined to be more stringent than the federal program because OAR 340–104–1201 adds additional requirements to munitions storage, including requirements for: storage unit operations and management plans; vapor containment mechanisms for nerve agent storage units; a requirement to not allow storage of munitions in an open area; and the State definition of ''no migration'' to mean no detectable concentration of chemical agent outside the storage unit. EPA's regulations defer the ''no migration'' criteria to Army management procedures which allow some detectable migration.

The State is preliminarily determined to be more stringent than the federal program because the State program defines, for purposes of reportable quantities, chemical agents (such as, for example, nerve agents GB, VX, and blister agent HD) to be hazardous materials at OAR 340–108–0002(9)(c), and at OAR 340–108–0010(1)(e) reportable quantity is defined to mean any quantity of chemical agent.

The State is preliminarily determined to be more stringent than the federal program in its incorporation by reference of the federal regulations at OAR 340–105–0041(3) because the State program deleted a cross-reference to the federal regulation at 40 CFR 270.42(h) and replaced the cross-reference with a citation to OAR 340–105–0041(4) which for the Umatilla Chemical Depot does not allow the acceptance of off-site shipments of munitions. The federal program does not restrict acceptance of such off-site shipments at the Umatilla Chemical Depot.

EPA has made the preliminary determination that certain of the State program regulations for universal waste are more stringent than the federal regulations.

The State regulations at OAR 340–113–0040(2)(b), (2)(b)(B), (3)(a) and (b), are preliminarily determined to be more stringent than the federal regulations at 40 CFR 273.12 and 273.32(b)(5), because the State requires owners or operators of off-site universal waste collection sites accumulating more than 1,000 kg of universal waste and non-pesticide universal waste to meet the notification requirements for large quantity generators and to submit additional information with the notification. The more stringent requirements of OAR 340–113–0040(2) and (3) are not applicable under the State regulation at OAR 340–113–0040(1)(b) to persons who collect, store or transport universal waste batteries.

The State regulations at OAR 340–113–0040(3)(a) and (b) are preliminarily determined to be more stringent than the federal regulations at 40 CFR 273.15(a) and (b) and 273.35(a) and (b), because the State regulations require owners and operators of off-site collection sites accumulating more than 1,000 kg of universal waste to limit the accumulation time to a six month period or to receive written approval from ODEQ to extend the accumulation period.

The State regulation at OAR 340–113–0040(4) is preliminarily determined to be more stringent than the federal regulation at 40 CFR 273.19 for tracking universal waste shipments because the State regulation applies to small quantity handlers accumulating more than 1,000 kg of universal waste.

The State regulation at OAR 340–113–0040(4)(b) is preliminarily determined to be more stringent than the federal regulation at 40 CFR 273.39(a) because the State regulation requires an off-site collection site to record the date the off-site universal waste was received.

The State regulation at OAR 340–113–0050(2) is preliminarily determined to be more stringent than the federal regulation at 40 CFR 273.60 because the State requires annual reporting of universal waste for all destination facilities.

The State regulation at OAR 340–113–0060(2)(b) is preliminarily determined to be more stringent than the federal regulation at 40 CFR 273.81(c) in listing additional factors to be considered when reviewing a petition to remove a universal waste from the universal waste rule. However, the use of such factors cannot result in the universal waste not remaining subject to the hazardous waste regulations.

The State program is preliminarily determined to be more stringent than the federal requirements at 40 CFR 279.22, Used Oil Storage, because the State regulation OAR 340–111–0032 requires generators to store used oil in accordance with applicable State and local Fire Marshal regulations and to keep rainwater from coming in contact with used oil during storage. The State program is preliminarily determined to be more stringent than the federal program at 40 CFR 279.45(h), 279.54(g), and 279.64(g), because the State program at OAR 340–111–0050 requires

handlers to respond to spills and releases according to more specific State requirements of OAR 340 Division 108 and requires used oil handlers to take immediate action to mitigate, report and clean up threatened spills and releases of used oil as required in OAR 340 Division 108.

Areas Where the State Program Is Broader in Scope

States are not allowed to seek authorization for State requirements that are broader in scope than the federal requirements. EPA does not have authority to authorize and enforce those parts of a State's program which are broader in scope than the federal program. Because the State program at OAR 340–101–0004 deleted from its incorporation by reference of the federal regulations the provisions of 40 CFR 261.4(b)(7)(ii), a list of 20 wastes from the extraction, beneficiation and processing of ores and minerals (Bevill wastes) which under the federal program are solid wastes that are not hazardous wastes, EPA has made the preliminary determination that the State program is broader in scope than the federal program with respect to these solid wastes.

The State program incorporated by reference rules that classified mineral processing characteristic sludges and byproducts being reclaimed as solid wastes and subjected manufactured gas plant waste to characterization under the toxicity characteristic regulations. The Federal regulations, 40 CFR 261.2(c)(3) parenthetical, 40 CFR 261.4(a)(17) as it referenced secondary materials rather than spent materials, and 40 CFR 261.24 as it applied to manufactured gas plant waste, were subsequently revised (67 FR 11251, March 13, 2002) because of a court vacatur of certain provisions of the regulations. Because of the vacatur, EPA cannot authorize the rules; thus EPA has made the preliminary determination that the State is broader in scope because the State program regulations at OAR 340–100–0002 incorporated the federal rules by reference as those rules existed before the vacatur.

The State incorporated by reference at OAR 340–224–0220 the federal regulation at 40 CFR 63.1210(b) which was vacated on July 24, 2001. EPA has made the preliminary determination that the State hazardous waste program is broader in scope to the extent, if at all, the State hazardous waste regulations reference or cross-reference the vacated federal rule.

The State regulations define ''pesticide residue'' at OAR 340–100–0010. The State interprets ''pesticide residue'' to include state-only pesticides which are state-only hazardous wastes and outside the scope of the federal regulations. A generator of state-only pesticide residues may designate such residues as ''waste pesticide'' and manage the residues in a manner consistent with the universal waste management standards of OAR Division 113, under a state water pollution control facility permit, at a Subpart C facility as allowed by OAR 340–109–0010(4)(a) or in a Subpart D facility provided land disposal restrictions were met. Portions of the State definition for universal waste, OAR 340–113–0020(4) are preliminarily determined to be broader in scope than the federal regulations at 40 CFR 260.10 and 273.9 by the addition of ''waste pesticides,'' which as defined by the State at OAR 340–109–0001(2)(a), are those not subject to regulation as hazardous waste under the federal regulations at 40 CFR Parts 260 to 270. Portions of the State definition of ''universal waste,'' OAR 340–113–0020(4), are also preliminarily determined to be broader in scope where the definition includes ''pesticide residues'' that are not part of the federal program.

The State regulation at OAR 340–113–0010(1)(a), in addition to wastes covered by 40 CFR 273.3, adds waste pesticides and pesticide residues to the applicability section of the universal waste rules. This addition is preliminarily determined to be broader in scope where such waste pesticides or pesticide residues would not be part of the federal program.

H. Who Handles Permits After This Authorization Takes Effect?

Oregon will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits, or portions of permits, issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit or portion of permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit or portion of permit. EPA will continue to issue permits, or portions of permits, for HSWA requirements for which the State program in Oregon is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Oregon?

EPA's decision to authorize the hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon; (2) any land held in trust by the U.S. for an Indian tribe; and (3) any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151 and will continue to implement and administer the RCRA program in Indian country.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). This action does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not

economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The proposed rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 3, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–14760 Filed 6–14–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 116
Monday, June 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–02–04]

Nominations for Member of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Approved and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill the position of Environmentalist on the NOSB. The Secretary of Agriculture will appoint a person to serve a 5-year term of office that will commence on January 24, 2003, and run until January 24, 2008. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with resumes, must be post-marked on or before August 16, 2002.

ADDRESSES: Nominations should be sent to Ms. Katherine E. Benham, Agricultural Marketing Information Assistant, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine E. Benham, (202) 205–7806; E-mail: *katherine.benham@usda.gov;* Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The current NOSB has made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill an Environmentalist vacancy. Any individual desiring to be appointed to the NOSB at this time must demonstrate expertise in areas of environmental protection and resource conservation.

Nominees will be supplied with a biographical information form that must be completed and returned to USDA within 10 working days of its receipt. Completed biographical information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: June 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–15186 Filed 6–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Longleaf Ecosystem Restoration Project, National Forests in Alabama, Talladega National Forest, Oakmulgee Ranger District, Tuscaloosa, Hale, Bibb, and Perry Counties, AL

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Forest Service will prepare an Environmental Impact Statement on a proposal to emphasize restoration of the longleaf ecosystem across the Talladega National Forest, Oakmulgee Ranger District in a systematic five-year program involving:

1. Intermediate thinning of approximately 3,726 acres of 20–70 year old off-site trees, primarily loblolly and shortleaf pine. Thinning would occur on 105 sites to remove damaged and diseased trees, to improve stand health, and to promote future longleaf pine establishment.

2. Intermediate thinning on approximately 2,324 acres to improve habitat for the endangered red-cockaded woodpecker (RCW), primarily longleaf pine that ranges in age from 25 to 95 years.

3. Restoration of the native longleaf pine ecosystem on 200 sites (approximately 6,700 acres) currently identified as off-site, high-risk stands, of declining loblolly pine, shortleaf pine, and pine-hardwood. Generally, existing longleaf pine and clumps of fire tolerant, upland hardwoods, will be retained. Longleaf pine will be restored by planting except where enough longleaf pine remains to naturally reestablish itself.

DATES: Comments concerning this analysis should be received in writing by July 25, 2002.

ADDRESSES: Send written comments to: Emanuel Hudson, District Ranger, Oakmulgee Ranger District, 9901 Highway 5, Brent, Alabama 35034.

FOR FURTHER INFORMATION CONTACT: Emanuel Hudson, District Ranger, Jim Shores, Silviculturist, Larry Mullins, NEPA Coordinator, Jim Mawk, Wildlife Biologist, Joe Fowler, Timber Management Assistant, Lovoyd Fountain, Engineering Technician, Telephone Number: (205) 926–9765, Fax Number: (205) 926–9712.

SUPPLEMENTARY INFORMATION:

A. The Proposal

1. Intermediate thinning of approximately 3,726 acres of 20–70 year old off-site trees, to increase vigor and growth and reduce short-term risk of Southern Pine Beetle (SPB) infestation. This thinning will begin the restoration process of changing these sites to longleaf pine/bluestem or longleaf pine/low shrub plant communities. These plant communities are structurally simple (pine overstory and bluestem grass/shrub understory), shaped primarily by the use of prescribed fire, and with occasional small gaps occurring from natural events.

2. Intermediate thinning on approximately 2,324 acres of red-cockaded woodpecker (RCW) habitat, primarily longleaf pine. These stands range in age from 25–95 years. Depending on site and stand condition, the objective of these thinnings is to produce medium stocked (70–100 basal area {BA}) longleaf pine stands with low SPB Risk Factor, which are desirable for RCW foraging and colonization.

3. Restoration cuts on approximately 6,700 acres of off-site, high-risk stands of declining loblolly pine, shortleaf pine and pine/hardwood to restore these sites to the native longleaf pine/bluestem or longleaf pine/low shrub plant communities. Generally, longleaf pine will not be removed in restoration cuts. However, if needed to improve stand health, some longleaf pine clumps with a BA > 70, may be thinned in the restoration cuts. This forest health treatment will require artificial regeneration of longleaf pine in most stands. In parts of stands where scattered longleaf pine trees exist, natural regeneration will be promoted.

4. Re-establish restoration cut areas with longleaf pine seedlings within five years of cutting. Site preparation on the 6,700 acres receiving restoration cuts would be accomplished using the herbicides Imazapyr (Trade name: Arsenal) and Triclopyr (Trade name: Garlon 3A & Garlon 4). This herbicide application would be used on competing vegetation remaining in restoration areas after harvest operations are complete. It would be followed by a prescribed burn to reduce logging debris to help accomplish site planting. Site preparation prescribed for each site will be the least intensive treatment needed to insure survival of the planted longleaf seedlings. If needed, herbicide application would also be used to release the pine seedlings from competition in the second growing season.

5. To help achieve the desired restoration, prescribed burning will be used to favor fire adapted species. Use of dormant season and growing season prescribed burns 2 or 3 times each decade, will reduce tree density and promote the growth of fire adapted grasses, forbs, and shrubs.

B. Needs for the Proposal

1. Restore the longleaf pine ecosystem to provide more suitable habitat for the red-cockaded woodpecker (RCW) to aid in recovery. RCW is an endangered species.

2. Return acreage occupied by other tree species to native longleaf pine and promote recovery of the longleaf ecosystem.

3. Establish a systematic program to aid in longleaf ecosystem restoration. Loblolly pine and shortleaf pine begin to loose vigor and exhibit decline symptoms at approximately age 50 on upland sites. They do not reach adequate age and size to provide sufficient cavity trees for RCW nesting habitat over the long term.

4. Loblolly pine and shortleaf pine are more susceptible to SPB than longleaf pine. Overstocked pine stands need thinning to minimize SPB hazard and to reduce potential impacts on other resources such as recreation, wildlife, soil and water.

5. Some of the off-site stands have woody/brushy midstory and understory. Thinning of these stands combined with prescribed burns will reduce the number of off-site and encroaching species. This would help restore and maintain a more grassy native groundcover.

6. Implement the goals and objectives of the Forest Plan to protect habitat and improve conditions for threatened, endangered and sensitive species occurring on National Forest lands.

C. Nature and Scope of the Decision To Be Made

Whether, and to what extent, to implement an accelerated program of restoring sites to longleaf pine and associated understory species. Historically, these sites were part of the longleaf pine ecosystem but now contain off-site species that were artificially introduced.

The fire dependent longleaf pine ecosystem was the most prevalent forest type in the south during pre-settlement times. During settlement, stands of longleaf pine were cleared for agricultural purposes and to obtain building materials. By 1929, most of the longleaf pine stands had been cut.

In the late 1960's and early 1970's regeneration of longleaf pine was difficult and often unsuccessful. Longleaf is more difficult to plant than other southern pines and most research on growing longleaf has only been done in recent years.

Beginning in 1985, through applied research, the availability of containerized seedlings, and experience, managers became very successful at planting longleaf pine with the expectation of adequate survival. Seedling survival on the Oakmulgee RD now averages about 85–90%. Currently, about 30,000 acres of native longleaf pine sites on the Oakmulgee Ranger District are growing loblolly and shortleaf pine. These stands are in various stages of collapse due to loblolly decline disease, and the demise of these older stands is occurring faster than they are being restored to longleaf at our current rate of restoration. This poses a serious threat to the endangered RCW due to its loss of habitat. Compounding this problem is the loss of many stressed and overstocked loblolly pine stands due to Southern Pine Beetle attack. Meanwhile, the associated threat of severe fire danger is increasing because of fuel build-up from dead timber.

The major reasons we are proposing this project are to reduce the loss of native plant communities, improve forest health, and improve RCW habitat. To overcome this loss of RCW habitat, there is a need to enhance or restore the longleaf pine ecosystem on the entire district. However, because of personnel, funding, and other constraints, for the first five year period, we have selected as a priority to treat stands most severely damaged by loblolly decline disease. The stands are also located where we currently have the largest concentration of RCW.

D. Proposed Scoping Process

The scoping period associated with this Notice of Intent (NOI) will be thirty (30) days in length, beginning the day after publication of this notice. Preliminary scoping for this proposal began in February 2002, when information was shared with the public on the proposal and plans to document the analysis in an Environmental Impact Statement (EIS). A public tour will be held on Saturday July 20, 2002 from 9 a.m. until 1 p.m. This tour is intended to show interested individuals a few of the sites proposed for treatment, as well

as similar sites that have been treated in the past few years. This tour will serve as the public scoping meeting.

A preliminary proposal to improve forest health was developed after stand conditions were examined in 2001. The proposal has been refined since that time and some preliminary issues and alternatives have been developed and are included in this notice. A decision to proceed with an Environmental Impact Statement has been made due to potential effects for the RCW and the possible need for formal consultation with the Fish and Wildlife Service (USDI).

The Oakmulgee Ranger District is seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.

2. Identifying issues to be analyzed in depth.

3. Eliminating insignificant issues or those which have been covered by a previous relevant environmental analysis.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives.

E. Preliminary Issues Identified to Date Include

1. How will aquatic habitats be impacted from harvests and site preparation? What inventory data will be needed?

2. What will be the impacts on TES/PETS/MIS (other than RCW)? What inventory data will we need to evaluate impacts?

3. Will prescribed burning negatively impact air quality? What will be the season of burning and interval of burning?

4. What will be the effect of herbicides on people, wildlife, and surface water/ground water?

5. Can off-site treatments to restore the longleaf pine ecosystem be implemented to have long-term (and possible short term) benefits to the RCW while having no negative impacts to the existing RCW population?

6. What impacts will the proposed action have on visual quality objectives?

7. What impacts will the proposed action have on recreational opportunities?

F. Possible Alternatives Identified to Date Include

1. No Action: This alternative will serve as a baseline for comparison of alternatives. Present management activities will continue, but the proposed project will not be done. This alternative will be fully developed and analyzed.

2. Proposed Action: As listed above, this alternative would include a five-year systematic program of thinning and restoration cuts. Site Preparation of the restoration areas would be accomplished using herbicides and prescribed burning. These site preparation methods would result in fully stocked stands of longleaf pine seedlings in three to five years after the restoration cuts are complete. Release of seedlings would be accomplished through the use of herbicides and prescribed burning. In addition, prescribed burning will be used to maintain habitat conditions for native species of plants and wildlife.

3. Modified Proposed Action: This alternative would include a five-year program of thinning and restoration cuts. Site preparation would be done using mechanized equipment; release of seedling would be with hand tools; and prescribed burning will not be used to maintain habitat conditions for native species of plants and wildlife.

G. Special Permit Needs

There are no special permits required from any State or Federal agencies in order to implement this project.

H. Lead Agency

The USDA Forest Service is the lead agency for this project. The Fish and Wildlife Service (USDI) has been involved with this proposal since inception and will continue to be throughout this analysis. Formal consultation may be required in order to implement one or more of the alternatives.

The Oakmulgee Ranger District requests that comments be as specific as possible for this proposal and be sent to: Emanuel Hudson, District Ranger, USDA Forest Service, 9901 Highway 5, Brent, Alabama 35034.

It is estimated that the draft EIS will be available for public comment by July 31, 2003. It is very important that those interested in this proposed action participate at this time. To be helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (*see* the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions: *Vermon Yankee Nuclear Power Corp.* v. *NRDC,* 435 U. S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Estimated Date for FEIS

After the DEIS comment period ends, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by November 2003. The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision (ROD). That decision will be subject to appeal under 36 CFR 215.

The responsible official for this project will be Emanuel Hudson, District Ranger for the Oakmulgee Ranger District, National Forest in Alabama at 9901 Highway 5, Brent, Alabama 35034.

Dated: June 11, 2002.

Emanuel Hudson,

District Ranger.

[FR Doc. 02–15155 Filed 6–14–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request an extension for and revision to a currently approved information collection, the Field Crops Objective Yield Surveys.

DATES: Comments on this notice must be received by August 21, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW, Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crops Objective Yield.

OMB Control Number: 0535–0088.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Field Crops Objective Yield Surveys objectively predict yields for corn, cotton, potatoes, soybeans, and wheat. Sample fields are randomly selected for these crops, plots are laid out, and periodic counts and measurements are taken and then used to forecast production during the growing season. Production forecasts are published in USDA Crop Production reports. Decreases in the previous number of sample plots and in the number of data collections per sample plot are planned. The Field Crops Objective Yield Surveys has approval from OMB for a 3-year period; NASS intends to request that the surveys be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 24 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,225.

Estimated Total Annual Burden on Respondents: 2,900 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: June 4, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–15124 Filed 6–14–02; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the California Advisory Committee to the Commission will convene at 8:00 p.m. and recess at 10:00 p.m. on Wednesday, July 24, 2002, at the Crown Plaza Hotel/Union Square, 480 Sutter Street, San Francisco, California 94108. The Committee will discuss format and procedures for conducting a briefing. The Committee will reconvene on Thursday, July 25, 2002, at 9:00 a.m. and adjourn at 3:00 p.m., to be briefed by community leaders and public officials on racial profiling.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 10, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–15126 Filed 6–14–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Michigan Advisory Committee to the Commission will convene from 9:00 a.m. and adjourn at 5:00 p.m. on Thursday, June 27, 2002, at the Hotel Pontchartrain, Two Washington Boulevard, Detroit, Michigan 48226. The purpose of the planning meeting with briefing is to discuss Muslim and Arab American civil rights issues post 9/11, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jack Martin, (248) 645–5370, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–15125 Filed 6–14–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–810]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Luxembourg

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: June 17, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department's'') regulations are references to 19 CFR Part 351 (April 2001).

Scope of the Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Amendment of Final Determination

In accordance with section 735(a) of the Act, on May 20, 2002, the Department published the final determination in the less-than-fair-value (LTFV) investigation on structural steel beams from Luxembourg. *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Luxembourg*, 67 FR 35488. On May 22, 2002, we received a submission, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondent, ProfilARBED, S.A. (ProfilARBED), alleging ministerial errors in the Department's final determination with respect to the application of facts available for the ocean freight expense on U.S. sales, the revision of the date of sale for certain U.S. sales, and the failure to convert the normal value to U.S. dollars in the margin calculation programming. On May 28, 2002, the petitioners[1] submitted comments with respect to ProfilARBED's claim regarding ocean freight.

After analyzing ProfilARBED's submission, we agree that the Department made ministerial errors by (1) incorrectly revising the date of sale to U.S. sales made from a warehouse, and (2) failing to convert the third country normal value from Euros to U.S. dollars before making the CEP offset and calculating the per-unit dumping margin. With respect to the first allegation concerning ocean freight expense, we have determined that there was no ministerial error in either the Department's decision to apply facts available to the ocean freight expense, or in selecting the facts available rate for the expense. *See* Memorandum to Richard Moreland from The Team, dated June 5, 2002, for further discussion of ProfilARBED's ministerial errors allegations and the Department's analysis.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination in the LTFV investigation on structural steel beams from Luxembourg.

The revised weighted-average dumping margin is as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage
ProfilARBED	6.14
All Others	6.14

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, ProfilARBED.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the United States Customs Service to continue suspending liquidation on all imports of the subject merchandise from Luxembourg. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This investigation and notice are in accordance with sections 735(d) and 777(i)(1) of the Act.

DATED: June 7, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–15206 Filed 6–14–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioners in this investigation are the Committee for Fair Beam Imports and its individual members, Northwestern Steel and Wire Company, Nucor Corporation, Nucor-Yamato Steel Company, and TXI-Chaparral Steel Company, domestic manufacturers of Structural Steel Beams.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Short Supply Request Under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

June 12, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain 100 percent cotton yarn-dyed flannel fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 11, 2002 the Chairman of CITA received a petition from Intradeco Corporation alleging that certain 100 percent cotton yarn-dyed flannel fabrics, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 2, 2002 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Contact: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Carribean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 11, 2002, the Chairman of CITA received a petition from Intradeco Corporation of Miami, Florida, alleging that certain 100 percent cotton yarn-dyed flannel fabrics, classified in HTSUS subheading 5208.43.00, of construction 2X2 twill weave 64X54, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than July 2, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–15218 Filed 6–12–02; 4:37 pm]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (CFTC or agency) in accordance with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658) as implemented by the final guidelines published by the Office of Management and Budget, Executive Office of the President, on September 28, 2001 (66 FR 49718) and on January 3, 2002 (67 FR 369) (and reprinted in their entirety on February 22, 2002, 67 FR 8452), ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,'' posted its draft guidelines on the CFTC website, *http://www.cftc.gov/* on April 22, 2002 (*see* 67 FR 19558, April 22, 2002).

DATES: Comment period extended to July 19, 2002.

FOR FURTHER INFORMATION: Comments should be sent by email to *mailto:informationquality@cftc.gov* or by FAX to Information Quality at (202) 418–5541.

SUPPLEMENTARY INFORMATION: In response to requests to extend the comment period in order to provide additional time for review of the draft guidelines, the Commission extended

the comment period from June 1, 2002 to July 19, 2002.

Dated: June 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–15179 Filed 6–14–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: Application for Ability to Benefit Testing Approval (JS).

Frequency: Annually.

Affected Public: Businesses or other for-profit (primary), individuals or household, not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150090.

Burden Hours: 77040.

Abstract: The Secretary will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability to benefit for a student who does not have a high school diploma or its equivalent for Student Financial Assistance Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2065. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–15145 Filed 6–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 17, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 11, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Program for North American Mobility in Higher Education (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 600.

Abstract: The Program for North American Mobility in Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2038. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report forms for the FIPSE US-Brazil Higher Education Consortia Program (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: FIPSE's US-Brazil Higher Education Consortia Program awards grants to U.S. institutions participating in bilateral institutional cooperation and student exchange programs in the United States and Brazil. The enclosed protocols for the first year and second year annual reports are necessary to ensure that the information and data to be collected will result in a balanced and effective assessment of the student exchanges and curricular developments of the US-Brazil Higher Education Consortia Program.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1941. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–15146 Filed 6–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

[CFDA No.: 84.350A]

Transition to Teaching Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purposes of Program: The Transition to Teaching program supports the recruitment and retention of highly qualified mid-career professionals, school paraprofessionals, and recent college graduates as teachers in high-need schools, through use of existing, or development and enhancement of new, alternative routes to certification.

Eligible Applicants: A State educational agency (SEA); a high-need local educational agency (LEA); a for-profit or nonprofit organization with a proven record of effectively recruiting and retaining highly qualified teachers, in partnership with a high-need LEA or an SEA; an institution of higher education (IHE), in partnership with a high-need LEA or an SEA; a regional consortium of SEAs; or a consortium of high-need LEAs.

Application Available: June 17, 2002.

Deadline for Transmittal of Applications: August 1, 2002.

Deadline for Intergovernmental Review: September 30, 2002.

Estimated Available Funds: Approximately $35,000,000. The Department has established separate funding categories for projects of different scope. These categories are (1) national/regional projects, where placement of teachers would be in LEAs in more than one State; (2) statewide projects, where placement of teachers would be statewide or in LEAs scattered across a particular State; and (3) local projects, where placement of teachers would be in one LEA or in two or more LEAs located in close proximity to one another.

The estimated available funds for each category is as follows: *National/regional projects:* $7,750,000; *Statewide projects:* $15,000,000; Local projects: $12,500,000.

Funds available in future years depend on the level of Congressional appropriations.

Estimated Range of Awards: National/regional projects—$300,000–$1,200,000 per year; Statewide projects—$150,000–$600,000 per year; Local projects—$50,000–$400,000 per year.

Estimated Average Size of Awards: National/regional projects—$750,000 per year; Statewide projects—$375,000 per year; Local projects—$225,000 per year.

Estimated Number of Awards: National/regional grants—10; Statewide grants—37; Local grants—60.

Maximum Awards: The maximum award amounts are expected to be $1,200,000 per year for a National/Regional project, $600,000 per year for a Statewide project, or $400,000 per year for a Local project. Absent exceptional circumstances, the Department does not intend to make awards in excess of these amounts.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part, 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99. (b) The special rules announced in this notice.

Page Limit. The application narrative is where applicants address the selection criteria that reviewers use to evaluate applications. Applicants must limit the narrative to the equivalent of no more than 50 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

• For charts, tables, and graphs, also use a font that is either 12-point or larger or no smaller than 10-pitch. Reviewers will not read any pages of applications that—

• Exceed the page limit if one applies these standards; or

• Exceed the equivalent of the page limit if one applies other standards.

SUPPLEMENTARY INFORMATION: On January 8, 2002, President Bush signed the No Child Left Behind Act of 2001 (Pub. L. 107–110) (NCLB) into law. NCLB, which substantially revises the Elementary and Secondary Education Act of 1965 (ESEA), is intended to provide all of America's students with the opportunity and means to achieve academic success. It embodies the four key principles of the President's education reform plan: (1) Accountability for results, (2) expanded State and local flexibility and reduced ''red tape,'' (3) expanded choices for parents, and (4) focusing resources on proven educational methods.

These principles aim to produce fundamental reforms in classrooms throughout America. NCLB provides officials and educators at the school, school district, and State levels substantial flexibility to plan and implement school programs that will help close the achievement gap between disadvantaged and minority students and their peers. At the same time, the reauthorized Act holds school officials accountable—to parents, students, and the public—for achieving results. These and other major changes to the ESEA redefine the Federal role in K–12 education to focus on improving the academic performance of all students.

The full text of this law may be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/*.

Ensuring that all students in this Nation succeed academically will require America's schools to hire and retain high-quality teachers as never before. Our responsibility to ensure that all students meet challenging content and performance standards, and ensure that no child is left behind, means that the 2.2 million teachers that our schools will need to hire over the next ten years will need to have thorough subject-matter knowledge of the areas they teach and effective teaching skills.

Yet many of our highest-need schools and LEAs are hard pressed to find enough well-qualified applicants, particularly in such fields as mathematics and science. As school enrollments continue to grow and retirements from the current teacher force increase, the Nation's teacher recruitment and preparation challenges will grow even more daunting.

Recognizing the importance of highly qualified teachers, Congress created in Title II of the ESEA a means for helping schools and LEAs to prepare, recruit, and retain highly qualified teachers and principals. The Transition to Teaching program is one of the components of Title II. It is designed to help the Nation's most severely pressed LEAs to supplement their efforts to secure highly qualified teachers by enabling those LEAs to hire and retain as teachers talented candidates from other professions and nontraditional backgrounds. The program does so by—

(1) Making use, or fostering the development and enhancement of, State-sanctioned alternative routes to teaching;

(2) Supporting both recruitment efforts to find teacher candidates from non-traditional backgrounds, and the financial incentives these candidates may need to make the career change into teaching;

(3) Helping these teacher candidates to gain State certification; and

(4) Making available quality mentoring and other follow-up support during these individuals' initial years in the classroom.

Priority

Under 34 CFR 75.105(c)(2)(i), the Department awards a competitive preference to an application that meets the following statutory priority:

Consistent with the statutory priority in ESEA section 2313(c), the Secretary awards five (5) additional points to a partnership or consortium that includes either a ''high-need LEA'' or a ''high-need SEA.'' See the ''Definitions'' section of this notice for the meaning of these terms.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules and competitive preferences. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

Requirements for FY 2002 Competition

Selection Criteria. The Secretary will use selection criteria in section 75.209 of EDGAR to evaluate each application. An applicant may earn up to 100 points on the basis of its response to these selection criteria. The general subject areas and the corresponding maximum number of points are:

Need for Project (10 points)
Quality of the Project Design (25 points)
Quality of Project Services (20 points)
Quality of Project Personnel (10 points)
Adequacy of Resources (10 points)
Quality of the Management Plan (10 points)
Quality of the Project Evaluation (15 points)

A full statement of the section criteria, and required application descriptions that must be provided in response to these criteria, is contained in the application package for this program.

Requirements For Application Content. ESEA section 2313(d)(2) identifies information that must be included in any application the Department would fund. As explained in the program's application package, we are requiring applicants to address this information in response to specific selection criteria.

Definitions. For purposes of the Transition to Teaching Program—

''*High-need LEA*'' means an LEA that—

1. (a) Serves not fewer than 10,000 children from families with incomes below the poverty line, or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line, and

2. For which there is (a) a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (b) a high percentage of teachers with emergency, provisional, or temporary certification or licensing. See ESEA section 2102(3).

Applicants will need to include information in their applications that demonstrates that they, or the LEA(s) with which they will work, meet this definition.

Note: For purposes of the four elements of this statutory definition of high-need LEA:

1. (a) The total number of children in poverty, as referenced above, can be found on the Census Bureau Web site at: *http://www.census.gov/housing/saipe/sd97/*.

This site reports the number of children in poverty for every school district in the United States. Locate the file for your State's data, and find your LEA. The sixth column provides the number of children in poverty.

1. (b) LEA poverty rates referenced in 1(b) of the definition of high-need LEA can be accessed on the Department's Web site at the following address: *www.ed.gov/offices/OESE/reap.html*.

See at this address ''Application Instructions'' and find the appropriate spreadsheet for the ''State'' in which the LEA is located. Column 11 identifies the percentage of an LEA's children from families below the poverty line. These poverty rates are available for LEAs that are included in the National Center for Education Statistics (NCES) Common Core of Data (CCD).

An LEA not included in the CCD must provide other data, such as the adjusted poverty data that its State used to make its Title I allocations, to demonstrate its eligibility.

2. (a) The Department does not have available to it suitable data with which to define a ''high percentage'' of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach. Therefore, to be eligible to receive an award, LEAs unable to meet the definition immediately below for ''high percentage of teachers with emergency, provisional, or temporary certification or licensing'' will need to demonstrate to the Department's satisfaction that they have a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach. The Department will review this aspect of the applications on a case-by-case basis.

2. (b) The best data available to the Department on the percentage of teachers with emergency, provisional, or temporary certification or licensing comes from the reports on the quality of teacher preparation that States provided to the Department in October 2001 under section 207 of the Higher Education Act (HEA). Specifically, States provided the percentage of teachers in their LEAs teaching on waivers, both on a statewide basis and in high-poverty LEAs. Based on data from these reports, the national average of teachers on waivers in high-poverty LEAs is 11 percent. The Secretary has determined that, for purposes of the definition of high-need LEA in section 2102, an LEA with at least 11 percent of its teachers teaching with emergency, provisional, or temporary certification or licensing, i.e., without an initial or more advanced State (or, where applicable, LEA) teaching certification or license, has a ''high percentage'' of these teachers and so meets the statutory definition.

''*High-need SEA*'' means an SEA of a State in which at least one LEA is a high-need LEA.

Note: While the ESEA requires the Department to give priority to applications from a partnership or consortium that includes a ''high-need LEA'' or ''high-need SEA,'' the ESEA does not define the term ''high-need SEA.'' Our definition of this term enables all SEAs to be considered high-need SEAs. However, a few States provided in their October 2001 reports to the Department under section 207 of the HEA on the quality of teacher preparation that they had no individuals teaching on waivers. To be a high-need SEA, the SEA in these States would have to demonstrate that at least one LEA in the State (1) meets one of the poverty criteria in paragraph 1(b) of the definition of high-need LEA, and (2) has a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach (paragraph 2(a) of that definition.)

''*High-need school*'' means a school that—

1. Is located in an area in which the percentage of students from families with incomes below the poverty line is 30 percent or more; or

2. Is—

(a) Located in an area with a high percentage of teachers who are teaching an academic subject or a grade level for which they are not highly qualified. (See ESEA section 9101(23) for the definition of ''highly qualified''.)

(b) Within the top quartile of elementary schools and secondary schools statewide, as ranked by the number of unfilled, available teacher positions at the schools;

(c) Located in an area in which there is a high teacher turnover rate; or

(d) Located in an area in which there is a high percentage of teachers who are not certified or licensed.

Note: Program grantees are to define the elements of this statutory definition of ''high-need school'' in ways that reflect, as much as possible, the meanings of related elements in the definition of ''high-need LEA.''

Final Project Year Activities. A recipient of a multiyear grant may use program funds to recruit several cohorts of eligible participants and have them hired as teachers in high-need schools of participating LEAs. However, in order to ensure that grantees (and the LEAs with which they partner) provide to all teachers recruited and hired through this program at least one year of intensive follow-up support in order adequately to train (and help to retain) these individuals as high-quality teachers, program funds may not be used to hire individuals as teachers after the end of the second to last project period. Therefore, a grantee that receives a five-year award (the maximum project period), for example, may not use program funds to recruit and hire teachers after the end of the 2005–06 school year.

Evaluation and Accountability. ESEA section 2314 requires grantees to submit to the Department and to the Congress interim and final reports at the end of the third and fifth years of the grant period, respectively. Subparagraph (b) of this section provides that these reports must contain the results of the grantee's interim and final evaluation, which must describe the extent to which high-need LEAs that received funds through the grant have met their goals relating to teacher recruitment and retention as described in the project application.

However, while each funded project must promote the recruitment and retention of new teachers in specific identified LEAs, because eligible grant recipients are not limited to LEAs it is possible that one or more funded projects will not provide funding to participating LEAs. In order that all project evaluations provide relevant information on the extent to which the project is meeting these LEA goals, the Department has determined that the interim and final evaluations must describe the extent to which LEAs that receive program funds or otherwise participate in funded projects have met their teacher recruitment and retention goals.

Limitation On Indirect Costs. The success of the Transition to Teaching Program will depend upon how well grantees and the high-need LEAs with whom they work recruit, hire, train, and retain highly qualified individuals from other professions and backgrounds to become teachers. If the program is to achieve its purpose, we need to ensure that the $35 million FY 2002 appropriation is used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that grant recipients may use to reimburse themselves for the ''indirect costs'' of program activities. Therefore, the Secretary has decided to establish a reasonable limit of eight percent on the indirect cost rate that all program recipients may charge to funds provided under this program.

For reasons we have offered in a limited number of other competitive grant programs that focus on improving teacher quality academically, we believe that a similar limitation on a recipient's indirect costs is necessary here to ensure that program funds are used to

secure the school leaders that Congress had intended. See, e.g., the analyses of (1) 34 CFR section 611.61, as proposed, that govern the Teacher Quality Enhancement Grants program, authorized by Title II, Part A of the Higher Education Act (65 FR 6936, 6940 (February 11, 2000), and (2) requirements for the FY 2001 grants competition under the Transition to Teaching program authorized in the FY 2001 Department of Education Appropriations Act, Public Law 106–554 (66 FR 19673, 19676–77).

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.350A.

A copy of the application package also may be obtained electronically at the following Web site: *http://www.ed.gov/GrantApps/.*

FOR FURTHER INFORMATION CONTACT: Dr. Frances Yvonne Hicks, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Room 3C153, Washington, DC 20202–6140. Telephone: 202 260–0964. Inquiries may also be sent by e-mail to: *transitiontoteaching@ed.gov* or by FAX to: (202) 205–5630.

If you use a telecommunications device for the deaf (TDD), you may call The Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting ED PUBS. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO, toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6683.

Dated: June 12, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–15295 Filed 6–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory

AGENCY: National Nuclear Security Administration.

ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration's (NNSA) Oakland Operations Office (OAK) announces its intent to prepare a Site-Wide Environmental Impact Statement (SWEIS) to evaluate the environmental effects of the operation of the Lawrence Livermore National Laboratory (LLNL) in Livermore, California. The SWEIS is being prepared in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR Parts 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR Part 1021). The SWEIS will analyze the potential environmental impacts associated with continuing current LLNL operations and foreseeable new and/or modified operations and facilities for approximately the next ten years. The No Action Alternative, to be analyzed in the SWEIS, is to continue current LLNL operations of programs in support of assigned missions, without foreseeable new operations and facilities for the next ten years. A reduced operation alternative will also be analyzed. The SWEIS will utilize the baseline information from the previous LLNL SWEIS (Environmental Impact Statement and Environmental Impact Report for the Continued Operation of Lawrence Livermore National Laboratories and Sandia National Laboratories, Livermore, August 1992), to the extent possible. The purpose of this Notice is to invite public participation in the process and to encourage public involvement on the scope and alternatives that should be considered.

DATES: NNSA invites other federal agencies, State and local governments, Native American Tribes and the public to comment on the scope of this SWEIS. The public scoping period begins with the publication of this Notice in the **Federal Register** and will continue until August 13, 2002. Written scoping comments postmarked by that date will be considered in the preparation of the draft SWEIS. Comments postmarked or received by e-mail after that date will be considered to the extent practicable.

Two public scoping meetings will be held at two different locations as indicated below. This information will also be published in local newspapers in advance of the meetings. Any necessary changes will be announced in the local media.

July 10, 2002, at 1:00 p.m. and 6:00 p.m., Double Tree Club (formerly the Holiday Inn), 720 Las Flores Rd., Livermore, CA 94550, (925) 443–4950

July 11, 2002, at 1:00 p.m. and 6:30 p.m., Holiday Inn Express, 3751 N. Tracy Blvd., Tracy, CA 95304, (209) 830–8500

The following website may be accessed for additional information. *http://www-envirinfo.llnl.gov/.* A toll free hotline 1–877 388–4930 has been established for leaving messages. The hotline will have instructions on how to record comments and requests for information.

ADDRESSES: Written comments on the scope of the SWEIS or requests for information should be sent to: Mr. Thomas Grim, Document Manager, U.S. Department of Energy, 1301 Clay Street, 700N, Oakland, CA 94612–5208, Phone (925) 422–0704.

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Mr. James J. Mangeno, NNSA NEPA Compliance Officer, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585; or telephone 1–800–832–0885, ext. 6–8395; or Ms. Janet Neville, Oakland Operations Office NEPA Compliance Officer, U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, 700N, Oakland, CA 94612–5208, or telephone (510) 637–1813. For general information on the DOE NEPA

process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom can be reached at 202–586–4600, or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

LLNL Mission

LLNL has been in existence for 50 years. LLNL has an annual budget of approximately $1.4 billion and employs approximately 8,000 people. The LLNL main site is located approximately 40 miles (65 kilometers) east of San Francisco in the Livermore Valley adjacent to the City of Livermore. The LLNL Experimental Test Facility (Site 300) is a high-explosives test site located 12 miles (20 kilometers) southeast of the City of Livermore between Livermore and Tracy, California.

National security is LLNL's primary mission. The Laboratory is focusing its efforts on two of the nation's top priorities: ensuring the safety, security, and reliability of the United States nuclear stockpile; and preventing and countering the proliferation of weapons of mass destruction. To support this mission LLNL will bring into operation significant new capabilities required for nuclear weapons stockpile stewardship. These include the National Ignition Facility and the Terascale Simulation Facility that is part of the Advanced Simulation and Computing Program (aka ASCI). In addition, LLNL will continue to apply its scientific and engineering capabilities to develop advanced defense technologies to increase the effectiveness of United States military forces.

Meeting National Needs

The Department of Energy and NNSA have enduring missions that are vital to the national interest. In addition to its national security mission, the Department's priorities include enhancing the nation's energy security by developing and making available clean energy; cleaning up former nuclear weapons complex sites; finding more effective technology for minimizing, treating, and disposing of nuclear waste; and leveraging science and technology to advance fundamental knowledge and economic competitiveness. The Laboratory's mission includes: energy security and long-term energy needs, environmental assessment and management, nuclear materials stewardship, advancing biosciences to improve human health, and pursuing breakthroughs in fundamental sciences and applied technology.

Role of the SWEIS in the DOE NEPA Compliance Strategy

The SWEIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR Part 1021). The DOE has a policy (10 CFR 1021.330) to prepare site-wide documents for certain large, multiple-facility sites, such as LLNL. The purpose of a SWEIS is to provide the public with an analysis of the potential environmental impacts from ongoing and reasonably foreseeable new and modified operations and facilities, and reasonable alternatives at a DOE site, to provide a basis for site-wide decision making, and to improve and coordinate agency plans, functions, programs, and resource utilization. The SWEIS provides an overall NEPA baseline so that the environmental effects of proposed future changes in programs and activities can be compared to the baseline. A SWEIS also enables DOE to ''tier'' its later NEPA project-specific reviews at a site to eliminate repetitive discussion of the same issues in future project-specific NEPA studies, and to focus on the actual issues ready for decisions at each level of environmental review. The NEPA process allows for Federal, state and local governments, Native American Tribes, and public participation in the environmental review process. The Final Environmental Impact Statement and Environmental Impact Report for Continued Operation of Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore [DOE/EIS–0157], August 1992, is the existing site-wide document for LLNL. In addition, a Supplement Analysis for Continued Operation of LLNL and SNL, California (DOE/EIS–0157–SA–01), dated March 1999, conducted a 5-year review and concluded that the 1992 SWEIS remained adequate for LLNL. To the extent possible, this SWEIS will utilize and update the data developed for the 1992 and 1999 documents. There is a potential to adopt this document for California Environmental Quality Act purposes, as was done in 1992.

Preliminary Alternatives

The scoping process is an opportunity for the public to assist NNSA in determining the alternatives and issues for analysis. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. A preliminary set of alternatives and issues for evaluation in the SWEIS is identified below. Additionally, during the development of the SWEIS, DOE may consider other alternatives that are judged to be reasonable.

No Action Alternative, Continuing Present Operations

The No Action Alternative would continue current facility operations throughout LLNL in support of assigned missions. NEPA regulations require analysis of the No Action Alternative to provide a benchmark for comparison with environmental effects of the other alternatives. This alternative includes the programs and activities described above in the LLNL Mission section and those activities for which NEPA review is already underway. Additionally, the No Action Alternative will include any interim actions that proceed independent of the SWEIS.

Proposed Action Alternative

This alternative would include the No Action Alternative as described above. In addition this alternative could include an increase in facility operations to levels that can be supported by current facilities, and operations that may require new or modified facilities, that are reasonably foreseeable over the next 10 years. Activities in support of this alternative could include revised waste management strategies that may consider additional options for on-site treatment and storage, and off-site disposition. The programmatic context for this alternative is the continued support of existing missions, and receipt of additional missions or projects, which need to be supported. The following two new operations, as a minimum, will be included in the SWEIS.

National Ignition Facility

The Record of Decision (ROD) (61 FR 68014) for the Stockpile Stewardship and Management, Programmatic Environmental Impact Statement (SSM PEIS) indicated that the Department would construct and operate the National Ignition Facility at the Lawrence Livermore National Laboratory as a key component of the NNSA's science-based stewardship of the nation's nuclear weapons stockpile. A lawsuit challenging the adequacy of the SSM PEIS alleged that there were new DOE proposals to conduct experiments at the NIF using hazardous and radioactive materials and that none of these materials were contemplated in the SSM PEIS. In a Memorandum

Opinion and Order issued by the U.S. District Court for the District of Columbia on August 19, 1998, in NRDC v. *Richardson*, Civ. No. 97–936 (SS) (D.D.C.), the Court dismissed the Plaintiffs' case against the Government. Pursuant to paragraph 6 of the Order, DOE, no later than January 1, 2004, will (1) determine that experiments using plutonium, other fissile materials, fissionable materials other than depleted uranium, lithium hydride, or a Neutron Multiplying Assembly will not be conducted in the NIF, or (2) prepare a Supplemental SSM PEIS analyzing the reasonably foreseeable environmental impact of such experiments.

As indicated in the January 15, 2002 **Federal Register** Notice (67 FR 1969), ''* * * at the present time there are no DOE proposals to use any of these materials in experiments in the NIF.'' The Department has in place a process to determine whether or not to propose the use of any of these materials in NIF experiments. If DOE were to decide not to propose the use of any of these materials in the NIF, the SWEIS would analyze the impacts of current NIF operations. If DOE were to decide to propose the use of any of these materials in the NIF, a NEPA analysis and determination would be undertaken as a project specific analysis to be included in the SWEIS. In addition to addressing the impacts of using these materials, if DOE were to decide to propose their use, the NIF project specific analysis would update the information from the NIF portion of the SSM PEIS and would address the potential impacts of any proposed changes to NIF operations.

Defense Nuclear Technology, Classified Project

A second project-specific analysis for a proposed classified Stockpile Stewardship project involving facilities and equipment in the Superblock will be included in the LLNL SWEIS as a classified appendix. The project-specific analysis will include information on the mission need and an evaluation of the environmental impacts of the construction, commissioning, and operation of this proposed project. To the extent possible, the main body of the SWEIS will include as much unclassified information on this project as possible, including potential impacts.

Reduced Operation Alternative

The overall programmatic context for this alternative is the maintenance of existing missions at a reduced or modified scope. In this alternative, DOE would consider and analyze proposals for the reduction or cessation of specific operations to reduce adverse environmental impacts. This alternative may include reasonable proposals for consolidating operations into fewer facilities (including subsequent analysis of decommissioning or demolition of vacated facilities) that have technical merit and would still meet NNSA's national security missions. Analysis would include waste generated from facility decommissioning or demolition, and from sustained operation at the proposed reduced level. Analysis of this alternative would include impacts on staffing, traffic, energy consumption, and natural resources. The Reduced Operations Alternative will not consider the complete closure and decontamination and decommissioning of LLNL and/or Site 300 for the reasons that follow. As one of only three nuclear weapons laboratories, LLNL contributes significantly to the core intellectual and technical competencies of the United States related to nuclear weapons. These competencies embody more than 50 years of weapons knowledge and experience. The laboratories perform the basic research, design, system engineering, development testing, reliability and assessment, and certification of nuclear weapon safety, reliability, and performance. From a broader national security perspective, the core intellectual and technical competencies of LLNL (and Los Alamos National Laboratory and Sandia National Laboratory, DOE's other nuclear weapons laboratories) provide the technical basis for the pursuit of United States arms control and nuclear nonproliferation objectives. As such, NNSA has determined that the alternative to shut down LLNL completely is unreasonable and will not be analyzed in the SWEIS.

Preliminary Environmental Analysis

The following issues have been identified for analysis in the SWEIS. The list is tentative and intended to facilitate public comment on the scope of the SWEIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The NNSA specifically invites suggestions for the addition or deletion of items on this list.

1. Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations, construction, and reasonably foreseeable accidents.
2. Impacts on surface and groundwater, floodplains and wetlands, and on water use and quality.
3. Impacts on air quality.
4. Impacts to plants and animals and their habitat, including species which are Federally or State listed as threatened or endangered, or of special concern.
5. Impacts on physiography, topography, geology, and soil characteristics.
6. Impacts to cultural resources such as those that are historic, prehistoric, archaeological, scientific, or paleontolological.
7. Socioeconomic impacts to affected communities.
8. Environmental Justice, particularly whether or not activities at LLNL have a disproportionately high and adverse effect on minority and/or low-income populations.
9. Potential impacts on land use plans and policies.
10. Impacts from transportation of radiological and hazardous materials on and off the LLNL sites.
11. Pollution prevention and waste management practices and activities.
12. Impacts on visual aesthetics and noise levels of the LLNL facilities on the surrounding communities and ambient environment.
13. Unavoidable adverse impacts due to natural phenomena (e.g., floods, earthquakes, etc.).
14. Cumulative effects of past, present, and future operations including SNL/CA.
15. Reasonably foreseeable impacts associated with the shutdown or demolition of excess facilities.
16. Impact of mitigation measures.

Related NEPA Reviews

Programmatic NEPA Reviews

The Waste Management Programmatic Environmental Impact Statement (PEIS) (DOE/EIS–0200) analyzed the DOE plan to formulate and implement a national integrated waste management program. The Final PEIS was published in May 1997 and a Record of Decision was published in the **Federal Register** on January 23, 1998 (63 FR 3629). The Final Stockpile Stewardship and Management PEIS was published in September 1996 [DOE/EIS–0236] and a Record of Decision (ROD) was signed by the Secretary of Energy on December 19, 1996 (61 FR 68014). Inherent in the many decisions made in the SSM PEIS ROD was the decision to continue the operation of the three national weapons laboratories, LLNL being one of the three. The ROD emphasized stockpile stewardship as an essential program to maintain the safety and reliability of the stockpile in the absence of underground nuclear testing, therefore requiring enhanced experimental capabilities in the future at the three national weapons laboratories. The SSM PEIS ROD also selected the LLNL as the site to construct and operate the NIF.

Sandia National Laboratories, California

A Notice of Intent to prepare a Site-Wide Environmental Assessment (SWEA) for Sandia National Laboratories, California (SNL/CA) was published in the **Federal Register** on February 4, 2002 (67 FR 5089). The SWEA will address operations and activities that DOE foresees at SNL/CA for approximately the next 5 to 10 years. The LLNL SWEIS will include the impacts from SNL/CA in the cumulative impacts section.

SWEIS Preparation Process

The SWEIS process begins with the publication of this Notice of Intent in the **Federal Register**. This notice establishes the public scoping period and the public scoping meetings as indicated above under **DATES**. Each public scoping meeting will begin with a briefing on the LLNL mission, proposed changes in operations and facilities, preliminary SWEIS alternatives, and the proposed action of the SWEIS. Copies of the meeting handouts will be available to anyone unable to attend by contacting the NNSA as described above under **ADDRESSES**. Following the initial presentation, NNSA representatives will answer scope-related questions and accept comments. After the close of the public scoping comment period, NNSA will begin development of the draft SWEIS. The draft SWEIS is expected to be available for public review in late 2003. Public meetings will be held following the Notice of Availability of the draft SWEIS. The publication of the final SWEIS is scheduled for mid 2004 and the Record of Decision is scheduled for late 2004.

Classified Material

NNSA will review classified material while preparing this SWEIS. Within the limits of classification, NNSA will provide to the public as much information as possible to assist public understanding and comment. Any classified material NNSA needs to use to explain the purpose and need for the action, the use of materials, or the development of impacts, will be segregated into a classified appendix or supplement, which will not be available for general public review. However, all unclassified results of calculations will be reported in the unclassified section of the SWEIS, to the extent possible in accordance with federal classification requirements.

Availability of Scoping Documents

Copies of scoping materials related to the SWEIS will be available at the following locations:

The DOE Energy Information Center, Oakland Federal Building, First Floor of the North Tower, Room 180N, 1301 Clay Street, Oakland, California. Phone (510) 637–1762.

Lawrence Livermore National Laboratory Public Reading Room in the Visitors Center Trailer 6525, located at the East Gate Entrance off of Greenville Road, Livermore, California. Phone (925) 424–4026.

Livermore Public Library, 1000 South Livermore Avenue, Livermore California.

Tracy Public Library, 20 East Eaton Avenue, Tracy, CA.

Issued in Washington, DC, this 7th day of June, 2002.

John A. Gordon,

Administrator, National Nuclear Security Administration.

[FR Doc. 02–15165 Filed 6–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1486–000]

Cogen Technologies NJ Venture; Notice of Issuance of Order

June 11, 2002.

Cogen Technologies NJ Venture (Cogen NJ) filed an application to sell energy in wholesale transactions at negotiated, market-based rates. Cogen NJ also requested waiver of various Commission regulations. In particular, Cogen NJ requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Cogen NJ.

On May 24, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cogen NJ should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Cogen NJ is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Cogen NJ, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cogen NJ's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 24, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15172 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–144–000]

LG&E Capital Trimble County LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

June 11, 2002.

Take notice that on June 5, 2002 LG&E Capital Trimble County LLC (Applicant), a Delaware limited liability company with its principal place of business at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant operates two 152 MW (summer rating) combustion turbine electric generating units in Trimble County, Kentucky. The units

commenced commercial operations in May 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 2, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15168 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–145–000]

LG&E Trust No. 2001-A; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

June 11, 2002.

Take notice that on June 5, 2002, LG&E Trust No. 2001-A (Applicant) filed with the Federal Energy Regulatory Commission (Commission),an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pursuant to a synthetic lease arrangement, Applicant holds legal title to two 152 MW (summer rating) combustion turbine electric generating units in Trimble County, Kentucky. LG&E Capital Trimble County LLC is the beneficial owner of the units, which began commercial operations in May, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 2, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15169 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–122–002]

PJM Interconnection, L.L.C.; Notice of Filing

June 11, 2002.

Take notice that on May 30, 2002, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's May 15, 2002 ''Order Addressing Compliance Filing and Directing Further Modification,'' 99 FERC ¶ 61,170 (May 15 Order), refiled the changed pages previously filed in this docket to the PJM Open Access Transmission Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., and the PJM Transmission Owners Agreement to establish an effective date of May 15, 2002 for such changes, as directed by the May 15 Order.

Copies of this filing have been served on the parties to Docket No. EL01–122, all PJM Members, and the state electric regulatory commissions in the PJM control area.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 1, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15170 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1485–000]

Power Contract Finance. L.L.C.; Notice of Issuance of Order

June 11, 2002.

Power Contract Finance, L.L.C. (PCF) filed an application for authority to engage in the sale of wholesale energy, capacity, and ancillary services at market-based rates and for the reassignment of transmission capacity. PCF also requested waiver of various Commission regulations. In particular, PCF requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PCF.

On May 24, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East,

granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PCF should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, PCF is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of PCF, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PCF's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 24, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15171 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. EG02–126–000, et al.]

Federal Energy Regulatory Commission

June 7, 2002.

Central Illinois Generation, Inc., **et al.;** Electric Rate and Corporate Regulation Filings

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Generation, Inc.

[Docket No. EG02–126–000]

Take notice that on June 3, 2002, Central Illinois Generation, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an Amendment to the Application for Exempt Wholesale Generator Status.

Comment Date: June 24, 2002.

2. Central Maine Power Company

[Docket No. EL02–11–002]

Take notice that on May 22, 2002, Central Maine Power Company (CMP) tendered for filing with the Federal Energy Regulatory Commission (Commission or FERC) in compliance with the Commission's order issued on April 24, 2002 in Docket No. EL02–11–000, and in accordance with FERC Order 614, a First Revised Interconnection Agreement between CMP and Abbotts Mill Hydro (Abbotts Mill) (each a Party and, collectively, the Parties).

Comment Date: June 19, 2002.

3. Alliance Companies, et al.

[Docket Nos. EL02–65–003 and RT01–88–020]

Take notice that on May 28, 2002, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively Com Ed) tendered for filing with the Federal Energy Regulatory Commission (Commission) a filing in compliance with ordering paragraph '' of the Commission's April 25, 2002 Order on Petition for Declaratory Order in the above-captioned dockets.

Comment Date: June 17, 2002.

4. Alliance Companies

[Docket No.EL02–65–005]

Take notice that on May 28, 2002, Electric Power Service Corporation, on behalf of certain of its affiliated operating companies, submitted a compliance filing pursuant to Ordering Paragraph '' of the Commission's April 25, 2002, order in the referenced docket.

Comment Date: June 18, 2002.

5. Ameren Services Company

[Docket No.EL02–65–006]

Take notice that on May 28, 2002, Ameren Services Company submitted a compliance filing pursuant to the Commission's April 25, 2002, order in the referenced docket.

Comment Date: June 18, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1986–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Wolverine Power Supply Cooperative, Inc.

A copy of this filing was sent to Wolverine Power Supply Cooperative, Inc.

Comment Date: June 21, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1987–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by TransAlta Energy Marketing (U.S.) Inc.

A copy of this filing was sent to TransAlta Energy Marketing (U.S.) Inc.

Comment Date: June 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1988–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Minnesota Power.

A copy of this filing was sent to Minnesota Power.

Comment Date: June 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1989–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by New York State Electric and Gas Corporation.

A copy of this filing was sent to New York State Electric and Gas Corporation.

Comment Date: June 21, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1990–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Public Service Electric and Gas Company.

A copy of this filing was sent to Public Service Electric and Gas Company.

Comment Date: June 21, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1991–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Exelon Energy Power Team.

A copy of this filing was sent to Exelon Energy Power Team.

Comment Date: June 21, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1992–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Nordic Electric, LLC.

A copy of this filing was sent to Nordic Electric, LLC.

Comment Date: June 21, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1993–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by DTE Energy Marketing.

A copy of this filing was sent to DTE Energy Marketing.

Comment Date: June 21, 2002.

14. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1994–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Consumers Energy Company d/b/a/ Consumers Energy Traders.

A copy of this filing was sent to Consumers Energy Company d/b/a/ Consumers Energy Traders.

Comment Date: June 21, 2002.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1995–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by California Electric Marketing LLC.

A copy of this filing was sent to California Electric Marketing LLC.

Comment Date: June 21, 2002.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1996–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Nordic Marketing LLC.

A copy of this filing was sent to Nordic Marketing LLC.

Comment Date: June 21, 2002.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1997–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Conectiv Energy Supply, Inc.

A copy of this filing was sent to Conectiv Energy Supply, Inc.

Comment Date: June 21, 2002.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1998–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Northern Indiana Public Service Company.

A copy of this filing was sent to Northern Indiana Public Service Company.

Comment Date: June 21, 2002.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1999–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by NRG Power Marketing.

A copy of this filing was sent to NRG Power Marketing.

Comment Date: June 21, 2002.

20. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2000–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Illinois Power Company.

A copy of this filing was sent to Illinois Power Company.

Comment Date: June 21, 2002.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2002–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Duke Energy Corporation.

A copy of this filing was sent to Duke Energy Corporation.

Comment Date: June 21, 2002.

22. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2003–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Coral Power L.L.C.

A copy of this filing was sent to Coral Power L.L.C.

Comment Date: June 21, 2002.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2004–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by CMS MS&T Michigan L.L.C.

A copy of this filing was sent to CMS MS&T Michigan L.L.C.

Comment Date: June 21, 2002.

24. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2005–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Lansing Board of Water & Light.

A copy of this filing was sent to Lansing Board of Water & Light.

Comment Date: June 21, 2002.

25. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2006–000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Medford Electric Utility.

A copy of this filing was sent to Medford Electric Utility.

Comment Date: June 21, 2002.

26. Public Service Company of New Mexico

[Docket Nos.TX00–1–004 and ER00–896–004]

Take notice that on May 28, 2002, the Public Service Company of New Mexico (PNM) submitted a Compliance Filing pursuant to the Federal Energy Regulatory Commission's (Commission) ''Final Order Directing Transmission Services'' issued on April 29, 2002. The Order directs PNM to incorporate revisions to the PNM Open Access Transmission Tariff necessary to provide the transmission service that the Commission also directs PNM to provide to the Western Area Power Administration in the April 29, 2002 Order. PNM is submitting the filing to comply with the Order, but not for approval or effectiveness as a basis for providing service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM filed an amendment to the above-referenced filing on May 29, 2002, to remove an extraneous agreement that was unrelated to the compliance filing and was inadvertently included.

Copies of the filing have been sent to all Parties on the official Service Lists, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: June 18, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15123 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–110–009, et al.]

Duke Power, *et al.*; Electric Rate and Corporate Regulation Filings

June 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Power

[Docket No.ER96–110–009]

Take notice that on May 29, 2002, Duke Power, a division of Duke Energy Corporation, tendered for filing a revised Rate Schedule MR in compliance with the Letter Order dated May 14, 2002 in this proceeding.

Duke Power seeks an effective date of May 30, 2002 for the revised Rate Schedule MR.

Comment Date: June 19, 2002.

2. LSP Kendall Energy LLC

[Docket No. ER99–2602–002]

Take notice that on May 30, 2002, LSP Kendall Energy LLC requested confirmation that its obligation to make the triennial rate review compliance filing, which was originally imposed by the Federal Energy Regulatory Commission (Commission) in Docket No. ER99–2602–000, has since been extended from June 17, 2002 to January 28, 2004.

Comment Date: June 20, 2002.

3. American Electric Power Service Corporation

[Docket No. ER02–711–001]

Take notice that on May 31, 2002, American Electric Power Service Corporation submitted for filing an executed Interconnection and Parallel Operation Agreement, dated May 23,

2002, between Southwestern Electric Power Company (SWEPCO), Entergy Power Ventures, L.P., Northeast Texas Electric Cooperative, Inc. and EN Services, L.P. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

SWEPCO requests an effective date of March 5, 2002. Copies of SWEPCO's filing have been served upon Entergy Power Ventures, LP, Northeast Texas Electric Cooperative, Inc., EN Services, L.P. and the Public Utility Commission of Texas.

Comment Date: June 21, 2002.

4. American Electric Power Service Corporation

[Docket No. ER02–2007–000]

Take notice that on June 3, 2002, American Electric Power Service Corporation (AEPSC) submitted for filing with the Federal Energy Regulatory Commission (Commission) unexecuted Service Agreements for ERCOT Regional Transmission Service (TSAs) with the following customers: Bandera Electric Cooperative, Inc.; City of Bastrop, Texas; City of Bellville, Texas; Bluebonnet Electric Cooperative, Inc.; City of Boerne, Texas; City of Brenham, Texas; City of Burnet, Texas; Central Texas Electric Cooperative, Inc.; City of Cuero, Texas; DeWitt Electric Cooperative, Inc.; Fayette Electric Cooperative, Inc.; City of Flatonia, Texas; City of Fredericksburg, Texas; City of Georgetown, Texas; City of Giddings, Texas; City of Goldthwaite, Texas; City of Gonzales, Texas; Guadalupe Valley Electric Cooperative, Inc.; City of Hallettsville, Texas; Hamilton County Electric Cooperative Association; City of Hempstead, Texas; Kerrville Public Utility Board; LaGrange Utilities; City of Lampasas, Texas; City of Lexington, Texas; City of Llano, Texas; City of Lockhart, Texas; City of Luling, Texas; Lyntegar Electric Cooperative, Inc.; City of Mason, Texas; City of Moulton, Texas; New Braunfels Utilities; San Bernard Electric Cooperative, Inc.; City of San Marcos, Texas; City of San Saba, Texas; City of Schulenburg, Texas; City of Seguin, Texas; City of Shiner, Texas; City of Smithville, Texas; Texas Municipal Power Agency, City of Waelder, Texas; City of Weimar, Texas; and City of Yoakum, Texas (the TSA Customers).

AEPSC seeks an effective date of January 1, 2002 for these TSAs and waiver of the Commission's notice requirements. AEPSC served copies of the filing upon the TSA Customers and the Public Utility Commission of Texas.

Comment Date: June 24, 2002.

5. Duke Energy Corporation

[Docket No. ER02–2008–000]

Take notice that on June 3, 2002, Duke Rnergy Corporation (Duke) on behalf of Duke Electric Transmission (Duke ET), tendered for filing an unexecuted Interconnection and Operating Agreement (IOA) between Duke ET and GenPower Anderson, LLC.

Duke requests an effective date of June 4, 2002 for the IOA.

Comment Date: June 24, 2002.

6. California Independent System Operator Corporation

[Docket No.ER02–2009–000]

Take notice that on June 3, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Energia de Baja California, S. de R.L. de C.V. (EdBC) for acceptance by the Commission.

The ISO states that this filing has been served on EdBC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 29, 2002.

Comment Date: June 24, 2002.

7. California Independent System Operator Corporation

[Docket No. ER02–2010–000]

Take notice that on June 3, 2002, the California Independent System Operator Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for Scheduling Coordinators between the ISO and Energia de Baja California, S. de R. L. de C. V. for acceptance by the Commission.

The ISO states that this filing has been served on Energia de Baja California, S. de R. L. de C. V. and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 29, 2002.

Comment Date: June 24, 2002.

8. Central Power and Light Company

[Docket No. ER02–2011–000]

Take notice that on June 3, 2002, Central Power and Light Company (CPL) submitted for filing amendments to the Interconnection Agreement, dated September 2, 1998 between CPL and South Texas Electric Cooperative, Inc. (STEC) that provide for two new points of interconnection between the parties. These new points of interconnection will be at STEC's new Warburton Road Substation and CPL's existing Mathis Substation. No other changes have been made to the Interconnection Agreement.

CPL seeks an effective date of August 1, 2002 for the Warburton Road point of interconnection. CPL seeks an effective date of January 1, 2003 for the Mathis point of interconnection, and accordingly, seeks waiver of the Commission's notice requirements. CPL served copies of the filing on STEC and the Public Utility Commission of Texas.

Comment Date: June 24, 2002.

9. Puget Sound Energy, Inc.

[Docket No. ER02–2012–000]

Take notice that on June 4, 2002, Puget Sound Energy, Inc., tendered for filing an Amendment No. 1 to Agreement for the Installation of Electrical Facilities—South SeaTac. Puget Sound Energy requests an effective date of May 17, 2001 for this filing.

The filing reflects an agreement between Puget Sound Energy and the Port of Seattle to modify payment obligations for the installation of certain substation and related facilities for service to Seattle Tacoma International Airport, and the Port of Seattle. Copies of the filing were served upon the parties listed in the certificate of service.

Comment Date: June 25, 2002.

10. Xcel Energy Services, Inc.

[Docket No. ER02–2013–000]

Take notice that on June 3, 2002, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing a Transmission Agent Agreement between SPS and Roosevelt County Electric Cooperative, Inc. (Roosevelt County).

XES requests that this agreement become effective on January 14, 2002.

Comment Date: June 24, 2002.

11. Entergy Services, Inc.

[Docket No. ER02–2014–000]

Take notice that on June 3, 2002, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed Attachment Q to its Open Access Transmission Tariff. Attachment Q addresses local transmission constraints on the Entergy transmission system and provides a process for generators to participate in short-term bulk power markets without the necessity of a system impact study.

Entergy requests an effective date of August 1, 2002.

Comment Date: June 24, 2002.

12. Southern Company Services, Inc.

[Docket No. ER02–2015–000]

Take notice that on June 5, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement (Agreement) between Athens Development Company, L.L.C. and GPC. The Agreement allows Athens Development Company to interconnect its generating facility in Clarke County, Georgia to and operate in parallel with GPC's electric system. The Agreement is dated as of May 6, 2002.

An effective date of May 6, 2002 has been requested.

Comment Date: June 26, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2016–000]

Take notice that on June 5, 2002, the Midwest Independent Transmission System Operator, Inc.(Midwest ISO), pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Valley Queen Cheese Factory, Inc., the Midwest ISO, and the Otter Tail Power Company.

A copy of this filing was sent to Valley Queen Cheese Factory, Inc. and the Otter Tail Power Company.

Comment Date: June 26, 2002.

14. Southeast Chicago Energy Project, LLC

[Docket No. ER02–2017–000]

Take notice that on June 5, 2002, Southeast Chicago Energy Project, LLC (Southeast Chicago) tendered for filing a cost-based rate wholesale power sales agreement between Southeast Chicago and Exelon Generation Company, LLC.

Comment Date: June 26, 2002.

15. Blythe Energy, LLC

[Docket No. ER02–2018–000]

Take notice that on June 5, 2002, Blythe Energy, LLC tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: June 26, 2002.

16. Oncor Electric Delivery Company

[Docket No. ER02–2020–000]

Take notice that on June 5, 2002, Oncor Electric Delivery Company (Oncor) tendered for filing its FERC Electric Tariff, Seventh Revised Volume No. 1 for Transmission Service To, From and Over Certain HVDC Interconnections to supersede Oncor's current FERC Electric Tariff, Sixth Revised Volume No. 1.

Oncor states that this filing has been served upon each customer taking service under the tariff and the Public Utility Commission of Texas.

Comment Date: June 26, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15122 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7118–007]

State of Maine Department of Marine Resources; Notice of Availability and Adoption of Environmental Assessment

June 11, 2002.

Summary: Pending before the Federal Energy Regulatory Commission (FERC or Commission) is a request for surrender of exemption and removal of dam for the Smelt Hill Dam and Hydroelectric Project No. 7118. In accordance with the Commission's procedures for complying with the National Environmental Policy Act (NEPA), and consistent with the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA at 40 CFR 1506.3, the Commission has decided to adopt an environmental assessment (EA) produced by the U.S. Army Corps of Engineers (Corps), New England District in January 2001. The EA is titled: ''Smelt Hill Dam Environmental Restoration Study—Falmouth, Maine.'' The EA concludes that removal of the Smelt Hill Dam would not be a major Federal action significantly affecting the quality of the human environment. The FERC staff has independently reviewed the EA, and agrees with its analysis and conclusions. The staff therefore finds that the EA meets the standards for an adequate environmental analysis under NEPA, and can be adopted.

Availability: On September 10, 2001, the State of Maine Department of Marine Resources (MDMR) filed an application for surrender and removal of dam. MDMR's application included a copy of the Corps' EA. Copies of this filing are available for inspection at the Public Reference Room of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The application and EA are also available in electronic format on the FERC's Web site at *http://www.ferc.gov*.

Supplementary information: On March 14, 2002, MDMR completed its purchase of the Smelt Hill Dam and Hydroelectric Project facilities from the previous exemptee, Central Maine Power Company (CMP). The facilities are located at the head-of-tide on the Presumpscot River in Falmouth, Maine. The hydroelectric facilities have not been in operation since October 1996, when they were damaged by a flood. CMP elected not to rehabilitate the facilities and sought a buyer. MDMR entered into a purchase agreement with CMP on September 4, 2001, with the express purpose of removing the Smelt Hill Dam in order to restore the aquatic ecosystem of the lower Presumpscot River. On January 16, 2002, the State of Maine Department of Environmental Protection (MDEP) approved the dam removal under the Maine Waterway Development and Conservation Act and the Clean Water Act. MDMR requested that the Commission accept surrender of the exemption and authorize removal of the Smelt Hill Dam. While the surrender of an exemption is an administrative matter before the FERC, removal of the dam is essentially the same proposed action that the Corps examined in its EA.

Removal of the dam and hydroelectric facilities would be done by the Corps as an Aquatic Ecosystem Restoration Project under Section 206 of the Water Resources Development Act of 1966. On October 26, 2000, the Corps held a public meeting in Falmouth, Maine to discuss the project. The Corps released its draft EA on November 2, 2000, with a public comment period ending on November 30, 2000. The Corps addressed comments in its final EA issued in January 2001. The final EA included the Corps' Finding of No Significant Impact dated January 22, 2001.

The EA evaluated three alternatives: partial dam removal, complete dam removal, and rehabilitation of the existing hydraulic fish lift at the dam. The EA recommended complete removal of the Smelt Hill Dam, with primary disposal of debris in upland areas on-site. Under this plan, anadromous and other fish would be able to migrate unimpeded past Presumpscot Falls. Seven miles of former reservoir would be restored to riffle and pool complexes, with habitat suitable for cold water fish spawning, and warm water fish populations would be reduced.

The FERC staff carefully reviewed the Corps' EA and conducted an independent assessment of MDMR's proposal to surrender its exemption and remove the Smelt Hill Dam. Based on this review and assessment, the FERC staff concludes that the EA adequately assesses the environmental impacts of the proposed action and can be adopted. The FERC staff further concludes that the information in the record is adequate, and no supplemental or additional environmental review is required to evaluate the application.

In its regulations implementing NEPA, the CEQ encourages agencies to reduce paperwork and duplication of efforts. One means of accomplishing these goals is adopting environmental documents prepared by other agencies, pursuant to 40 CFR 1500.4(n). Because the actions analyzed by the Corps are substantially the same as those being proposed by MDMR, the FERC may adopt the Corps EA without recirculating it, pursuant to 40 CFR 1506.3(b). The FERC staff agrees with the EA's findings that removing the dam would facilitate upstream migration of anadromous fish and improve riverine habitat. The FERC also agrees with the EA's finding that removal of the dam is not a major Federal action significantly affecting the quality of the human environment, and finds that no supplemental or additional environmental data or analyses are necessary to complete the staff's review of MDMR's proposal.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15173 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File for New License

June 11, 2002.

a. *Type of Filing*: Notice of Intent to File an Application for New License.

b. *Project No.*: 9184–000.

c. *Date Filed*: April 3, 2002.

d. *Submitted By*: Flambeau Hydro, LLC—current licensee.

e. *Name of Project*: Danbury Dam Hydroelectric Project.

f. *Location*: On the Yellow River near the City of Danbury, in Burnett County, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act.

h. *Licensee Contact*: Loyal Gake, North American Hydro Inc., 116 State Street, P.O. Box 167, Neshkoro, WI 54960 (920) 293–4628.

i. *FERC Contact*: Tom Dean, *thomas.dean@ferc.gov*, (202) 219–2778.

j. *Effective date of current license*: June 10, 1957.

k. *Expiration date of current license*: June 9, 2007.

l. *Description of the Project*: The project consists of the following existing facilities: (1) A 30-foot-high, 54-foot-long concrete spillway dam with stoplog gates; (2) a 300-foot-long earthen dike; (3) a reservoir with a maximum pool elevation of 929.7 feet NGVD; (4) a gated intake structure; (5) two 25-foot-long, 69-inch diameter penstocks; (6) a powerhouse (Plant 1) containing two generating units with a total installed capacity of 476-kW; (7) an ungated canal headworks; (8) a 2,150-foot-long in-situ power canal; (9) a gated penstock intake structure; (10) a 95-foot-long, 96-inch diameter penstock, (11) a powerhouse (Plant 2) containing a single generating unit with an installed capacity of 600-kW; (12) a 200-foot-long tailrace; (13) a 2.4-kV, 2,325-foot-long transmission line from Plant 1; (14) a 2.4-kV, 200-foot-long transmission line from Plant 2; and (15) appurtenant facilities.

m. Each application for a license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 9, 2005.

n. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15174 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–000]

Natural Gas Pipeline Company of America; Notice of Motion To Defer Review Meeting

June 11, 2002.

Take notice that on June 5, 2002, Natural Gas Pipeline Company of America (Natural) filed a motion to defer the meeting to be held in June 2002 to review Natural's procedures for posting and allocating capacity in its system. Natural proposes that the meeting be deferred for one year, with the deferred review meeting to be held prior to the end of June 2003.

On October 26, 2000, the Commission issued an order [1] accepting with modifications a Stipulation and Agreement (Settlement) filed by Natural that adopted procedures to govern the posting and awarding of firm capacity on Natural's system. Article IV of that Settlement provides that a meeting is to held between 17 and 19 months after the effective date of the tariff sheets implementing the Settlement to review how the capacity award procedures are working. That provision would require that the meeting be held before the end of June 2002.

In its motion to defer the meeting, Natural states that no significant issue regarding the operation of its capacity award procedures has arisen over the 18 months that the procedures have been in effect, and that Natural does not believe that there is any need for the review meeting at this time. Natural states that pursuant to the Commission's order approving the Settlement, Natural

[1] 93 FERC ¶ 61,075 (2000), *reh'g denied,* 94 FERC ¶ 61,310 (2001).

is required to provide the parties and Commission Staff with extensive information one week prior to the meeting. Natural states that it will provide this information to the parties by June 17, 2002. Natural further states that if, after reviewing the information, any party concludes that the meeting should be held prior to June 2003, that party should advise Natural within 30 days of receiving the information, and Natural will convene the meeting promptly. Natural states that it has contacted the active parties in this docket, and that its proposal reflects the comments of those parties.

Any person desiring to respond to Natural's motion should file an answer with the Federal Energy Regulatory Commission , 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.213 of the Commission's Rules and Regulations. All such protests must be filed on or before June 20, 2002. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Web at *http://www.ferc..gov* (Call 202–208–2212 for assistance). Answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15175 Filed 6–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: June 10, 2002; 67 FR 39710.

Previously Announced Time and Date of Meeting: June 12, 2002; 10 a.m.

Change in the Meeting: The following Docket Nos. and Companies have been added as Item A–3 to the Commission meeting agenda of June 12, 2002.

Item No.	Docket No. and Company
A–3	RM01–12–000, Electricity Market Design and Structure. RT01–99–000, 001, 002 and 003, Regional Transmission Organizations. RT01–86–000, 001 and 002, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc. RT01–95–000, 001 and 002, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation. RT01–2–000, 001, 002 and 003, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc. RT01–98–000, PJM Interconnection, L.L.C. RT01–87–000, Midwest Independent System Operator. EL02–65–000, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15274 Filed 6–13–02; 10:58 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer)

230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Stephen Suiter, Princeton, Iowa, and Jane Suiter Gahard, LeClaire, Iowa; to acquire voting shares of Princeton/LeClaire Agency, Inc., Princeton, Iowa, and thereby indirectly acquire voting shares of Great River Bank & Trust, Princeton, Iowa.

Board of Governors of the Federal Reserve System, June 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15114 Filed 6–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire 100 percent of the voting shares of TW Interim National Bank, Houston, Texas, and Bank of Tanglewood, National Association, Houston, Texas.

2. First Midwest Acquisition Corporation, Midwest City, Oklahoma; to become a bank holding company by acquiring 80.6 percent of the voting shares of First Midwest Bancorp, Inc., Midwest City, Oklahoma, and thereby indirectly acquire First National Bank, Midwest City, Oklahoma.

In connection with this application, Applicant also has applied to engage indirectly in lending activities through the acquisition of FinancePoint, Inc., Del City, Oklahoma, and thereby engage in lending activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15113 Filed 6–14–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Tatsumi Arichi, Ph.D., National Cancer Institute, National Institutes of Health: Based on the report of an investigation conducted by the National Institutes of Health (NIH), Dr. Arichi's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Tatsumi Arichi, Ph.D., former Visiting Fellow in the intramural program of the National Cancer Institute (NCI), NIH, engaged in scientific misconduct by falsifying and fabricating published data.

Specifically, PHS found that Dr. Arichi falsified data that purported to show potent long lasting immunization of mice with plasmid DNA leading to protection from challenge with vaccinia virus expressing the hepatitis C core antigen as published in Figures 4, 5, and 6 in PNAS 97:297–302, 2000. This paper was retracted in PNAS 98:5943, 2001. The research involved use of a potential vaccine against hepatitis C, a virus that infects at least three million Americans, many of whom suffer serious health consequences such as cirrhosis and liver cancer.

Dr. Arichi has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of three (3) years, beginning on June 4, 2002:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–15160 Filed 6–14–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 02133]

Program for Research and Development of Methods for the Joint Toxicity Assessment of Environmental Mixtures; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Research and Development of Methods for the Joint Toxicity Assessment of Mixtures. This program addresses the ''Healthy People 2010'' Environmental Health focus area.

The purpose of the program is to conduct research and develop methods for the assessment of health effects of environmental chemical mixtures that can impact human health.

Measurable outcomes of the program will be in alignment with the following performance goal for ATSDR: Evaluate relationships between hazardous substances in the environment and adverse human health outcomes.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized in Sections 104(i)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(5)(A) and (15)]; and section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. The Catalog of Federal Domestic Assistance number is 93.161.

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, and additionally the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federal States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet their respective State's legislative definitions of State entity or political subdivision to be considered as an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $350,000 is available in FY 2002 to fund three to four awards. It is expected that the average award will be $100,000, ranging from $75,000 to $200,000. It is expected that the awards will begin on September 1, 2002, and will be made for a 12-month budget period within a project period of five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the required reports and availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. However, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Equipment may be acquired only when authorized, and the application should provide a justification of need to acquire equipment, the description, and the cost of purchase versus lease. To the greatest extent practicable, all equipment and products purchased with CDC/ATSDR funds should be American made. ATSDR retains the right to request return of all equipment purchased (in operable condition) with grant funds at the conclusion of the project period.

E. Program Requirements

In conducting activities to achieve the objectives of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and ATSDR will be responsible for conducting activities listed under 2. CDC Activities.

1. Recipient Activities

a. To conduct research to investigate the toxicity of chemical mixtures found in the environment through one or more of the following activities: evaluate the potential toxicity of chemical mixtures to human populations; identify relevant endpoints of toxicity common to chemical mixtures; evaluate pharmacokinetic interactions of chemical mixtures in biological systems; explore the role of toxicogenomics in deciphering interaction mechanisms; combine the knowledge gained through experimental work into the development of biologically based models; apply biologically based models to estimate and predict low-level interaction threshold effects; and develop methods for assessments of multiple health effects.

b. Establish and maintain a research plan and system for collecting information.

c. Share current information, and communicate opinions and research findings through reports and other means.

d. Participate in planning workshops or symposia to exchange current information, opinions, and research finding on mixtures.

2. ATSDR Activities

a. Provide consultative, administrative and technical assistance, as needed, in the development of the program of research activities for the enhancement of identified disciplinary areas.

b. Collaborate with the recipient in the establishment of a research plan and system for collecting data and developing periodic reports on activity.

c. Collaborate in analysis of data, assistance in interpretation of results, and further synthesis of conclusions so as to effectively communicate with partners and other interested parties.

d. Assist the recipient in writing and presenting publications including abstracts and journal articles.

e. Develop briefing materials for agency officials involved in public hearings.

f. Participate and collaborate with the applicant in planning workshops or symposia to exchange current information, opinions, and research findings on mixtures.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Although this program does not require in-kind support or matching funds, the applicant should describe any in-kind support in the application. For example, if the in-kind support includes personnel, the applicant should provide the qualifying experience of the personnel and clearly state the type of activity to be performed.

The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and each copy of the application must be submitted unstapled and unbound.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

The application must be received on or before 5:00 P.M. Eastern Time on July 22, 2002. Submit the application to: Technical Information Management—PA 02133, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if

they are received before 5:00 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of application by the closing date and time. If an application is received after the closing date due to (1) carrier error, when the carrier accepted the package with a guarantee of delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will—upon receipt of proper documentation—consider the application as having been received by the deadline. Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each applicant will be evaluated individually against the following criteria by an independent review group appointed by ATSDR:

1. Appropriateness and Knowledge of Study Design (25 points)

The extent to which the applicant's proposal addresses: (a) rationale for the proposed study design; (b) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (c) a detailed plan for analysis of the data.

2. Proposed Study (25 points)

The adequacy of the proposal relevant to: (a) The study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (d) the likelihood of the applicant completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

3. Relationship to Initiative (15 points)

The extent to which the application addresses the areas of investigation outlined by ATSDR.

4. Quality of Data Collection (15 points)

The extent to which: (a) the laboratory tests (if applicable) are sensitive and specific for the chemical or disease outcome of interest and (b) the quality control, quality assurance, precision and accuracy of information for the proposed tests are provided and acceptable.

5. Applicant Capability and Coordination Efforts (10 points)

The extent to which the proposal has described: (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study and (b) the suitability of facilities and equipment available.

6. Program Personnel (10 points)

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Program Budget (Not Scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds. The budget should include funds for one health assessor, one health educator, and one epidemiologist, health scientist or principal investigator to attend annual training meetings in Atlanta (five days).

8. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for the protection of human subjects? Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress report which should include:

a. A brief program description.

b. A listing of program goals and objectives accompanied by a comparison of actual accomplishments related to the goals and objectives for the period.

c. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

d. Other pertinent information, including the status of the program.

e. Measures of effectiveness data requirement to be submitted with, or incorporated into the semi-annual progress reports.

f. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period.

3. Final FSR and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobby Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

J. Where To Obtain Additional Information

This and other ATSDR announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Edna Green, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02133, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone (770) 488–2743, E-mail address: *EGreen@cdc.gov*.

For program technical assistance, contact(s): Dr. Moiz Mumtaz, Division of Toxicology, 1600 Clifton Road, N.E., Mail Stop E–29, Atlanta, Georgia 30333, Telephone (404) 498–0727, E-mail address: *mgm4@cdc.gov.*

Dated: June 11, 2002.

Sandra Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15152 Filed 6–14–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification of Maintenance of Effort Form Title III of the Older Americans Act, Grants for State and Community Programs on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 17, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Margaret A. Tolson, 202–401–0838.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

Describe Collection of Information

The Certification of Maintenance of Effort will be used by the Administration on Aging to verify the amount of State expenditures for Title III of the Older Americans Act, and make comparisons with such expenditures for the three previous years' to assure that the State Agency on Aging is in compliance with 45 CFR 1321.49. AoA estimates the burden of this collection of information as follows: ½ hour per State Agency on Aging annually, for a total of 28 hours.

In the **Federal Register** of March 12, 2001 (Vol 67, No. 48 Page 1119), the agency requested comments on the proposed collection of information.

No comments were received.

Dated: May 30, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–15112 Filed 6–14–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02174]

Emerging Infections Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement for the Emerging Infections Program (EIP). This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of the program is to expand the national EIP network by adding a tenth EIP in a state along the United States-Mexico Border.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases: (1) Protect Americans from priority infectious diseases, (2) Apply scientific findings to prevent and control infectious diseases, and (3) Strengthen epidemiologic and laboratory capacity to recognize, respond to, and monitor infectious diseases.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(1) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a), 247b(k)(1) and 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, along the United States-Mexico border. No other applications are solicited.

Eligibility is limited to these states for the following reasons:

1. Infectious diseases in the border region are a high priority and Congress has continually encouraged CDC to expand its efforts in this area, most recently in the FY 2002 appropriations language [Senate Report 107–84 (S.1536)].

2. The EIP model for population-based approach to infectious diseases is perfectly suited for studying and addressing infectious diseases along the border.

3. One of the key goals of the EIP network is to establish individual EIPs so that the network is geographically diverse. Adding the tenth EIP in one of the United States-Mexico border states is fully consistent with this goal.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $1,000,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish and operate an EIP to further local, State, and national efforts to address emerging infectious diseases:

(1) Establish the EIP in a defined population, which could include either an entire State or a geographically defined area (or areas) within a State. To accomplish the objectives of certain EIP activities, a minimum population base of approximately 1,500,000 may be necessary.

(2) Organize the EIP so that it will have the capacity to conduct multiple concurrent projects.

(3) Organize the EIP so that it will maintain the ability to accommodate changes in specific activities and priorities as the public health system's need for information changes or new health problems emerge.

(4) Operate the EIP so that it can function effectively as part of a national network of EIPs. Collaborate with CDC and other EIP sites, through the EIP steering group and other EIP working

groups, to establish priorities, to coordinate and monitor projects, and to assure that important emerging infections issues are well addressed.

b. Work to obtain technical and financial assistance to complement the basic assistance obtained from CDC.

c. Develop the EIP as a partnership between the health department and other public and private organizations that have an interest in addressing public health issues relating to emerging infectious diseases (e.g., local public health agencies, schools of public health, university medical schools, health care providers, infection control professionals, clinical laboratories, community-based organizations, other Federal and State government agencies, research organizations, medical institutions, foundations, etc.).

d. Conduct emerging infections activities in collaboration with appropriate partner organizations. Collaborate with other EIPs, as appropriate, to develop and conduct EIP activities.

(1) Categories of EIP activities. Activities of the EIPs generally fall into three categories:

(a) Active population-based surveillance projects. These may include collection and submission of disease-causing infectious agents to State, CDC, or other laboratories. For example, the surveillance case definition for the condition might involve detection of a positive culture or a drug resistant isolate in a microbiology laboratory, a serologic test result, a histopathologic finding, or a clinical syndrome, depending upon the disease or condition under surveillance; the specific approach to surveillance could also vary depending on the disease or condition under surveillance. Surveillance should be comprehensive (e.g., may include audits to assure complete reporting) with active case-finding.

(b) Applied epidemiologic and applied laboratory projects. Examples of potential projects include: evaluation of illnesses often not specifically diagnosed for which information on trends and etiology are important (e.g., diarrhea, encephalitis); evaluation of clinical outcomes or risk factors for drug resistant infections; and evaluation of the efficacy of pneumococcal and meningococcal conjugate vaccines.

(c) Implementation and evaluation of pilot prevention/intervention projects for emerging infectious diseases. Examples might include assessment of efforts to promote safe food preparation in the home, evaluation of impact of hand-washing promotion on infectious diseases in child care facilities, evaluation of the impact of Group B Streptococcus prevention activities, or evaluation of antibiotic prescribing practices in outpatient settings.

(2) Specific EIP activities.

In the application, propose the following four activities: three Core plus Border Infectious Disease Surveillance (BIDS). Applicants may also include (in addition to the four required activities) other activities of local interest or concern that are consistent with the guiding principles of the EIP network. Applicants are encouraged to consult with CDC programs in planning their proposed activities.

Core Activities:

(a) Active Bacterial Core surveillance (ABCs) and related activities.

(b) Active population-based laboratory surveillance for food-borne diseases and related activities (FoodNet).

(c) A syndrome surveillance activity, which includes a laboratory component (e.g., surveillance for respiratory syndromes; surveillance for meningitis and encephalitis).

Border Infectious Disease Activity: Border Infectious Disease Surveillance (BIDS) activities.

e. As a part of certain EIP projects, provide specimens such as disease-causing isolates or serum specimens to appropriate organizations (which may include, but are not limited to, CDC) for laboratory evaluation (e.g., molecular epidemiologic studies, evaluation of diagnostic tools).

f. Manage, analyze, and interpret data from EIP projects, and publish and disseminate important public health information stemming from EIP projects in collaboration with CDC and the EIP network.

g. Use measures of effectiveness to evaluate and demonstrate accomplishment of the scientific and operational objectives and purpose of the EIP cooperative agreement. Measures should be objective and quantitative and adequate to measure the intended outcome.

h. Incorporate training activities as an important component of the EIP. Training activities may take one or more of these forms:

(1) Provide training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students.

(2) Provide training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel.

(3) Act as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

i. If a proposed project involves research on human participants, ensure appropriate IRB review.

2. CDC Activities

a. Provide general coordination for the EIP network.

b. Provide consultation, scientific and technical assistance in the operation of the EIP and in designing and conducting individual EIP projects.

c. Participate in analysis and interpretation of data from EIP projects. Participate in the dissemination of findings and information stemming from EIP projects.

d. Assist in monitoring and evaluating scientific and operational accomplishments of the EIP and progress in achieving the purpose and overall goals of this program.

e. If needed, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained in EIP projects and integrate results with other data from EIP projects.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applications should address the following topics in the order presented:

1. Understanding the objectives of the EIP
2. Description of the population base for the EIP
3. Description of existing capacity to assess, control, and prevent emerging infectious diseases
4. Operational plan
5. Evaluation plan
6. Budget

Applicants should propose the four required (three core plus BIDS) activities and at least one optional activity. CDC will fund core and optional projects based on the application and availability of

resources. Optional activities may be chosen from the list provided or initiated by the applicant based on local interest, concern, or expertise that are in keeping with the guiding principles of the EIP. Each activity proposal, including both required and optional activities, should be clearly identified in a distinct portion of the operational plan and should not exceed three pages. Although the activities described below address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

Page Limitations

The application narrative (excluding budget, budget narrative, appendices, and required forms) must not exceed 25 single-spaced pages, printed on one side, with one-inch margins, and a font size no smaller than 10. The following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitaes, and budget. In addition, documentation of relevant accomplishments, such as abstracts, manuscripts, or bibliographies may be included in appendices. Materials or information that should be included in the narrative will not be reviewed if placed in the appendices.

Budget Instructions

For each line-item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. All other line-items should also be clearly justified. In addition to the budget justification, provide an estimate of the budget for each separate activity or project (e.g., FoodNet, ABCs, etc.).

Bona Fide Agent Status

If applicant is an agent of a State public health agency and not a State public health agency itself, documentation that applicant is acting as a bona fide agent of a State public health agency should be provided in an appendix. Applicants acting as bona fide agents of a State public health agency are strongly encouraged to consult with CDC's Grants Management Specialist (identified in Section J below) prior to submitting the application for guidance regarding what constitutes acceptable documentation.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

Applications may not be submitted electronically.

On or before 5 p.m. Eastern Time July 30, 2002, the application must be received by: Technical Information Management—PA 02174, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Description of Existing Capacity To Assess, Control and Prevent Emerging Infectious Diseases (40 points)

a. Description of applicant's past experience and documentation of accomplishments in conducting active surveillance, applied epidemiologic research, applied laboratory research, and prevention research, in general, and specifically on emerging infectious diseases, including antimicrobial drug resistant, food-borne and waterborne, currently or potentially vaccine preventable, and opportunistic diseases. (A list of relevant papers and abstracts should be included in an appendix.)

b. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with both public and private, local and regional, medical, public health, laboratory, academic, and community organizations. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

c. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., included in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to participate in the EIP and define their roles. Do not include letters of support from CDC personnel.

d. Demonstration of applicant's ability to participate in a multi-state collaborative network.

2. Operational Plan (40 points)

a. The extent to which the applicant's plan for establishing and operating the population-based EIP clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals.

b. The extent to which the applicant describes plans for collaboration with CDC and other EIP sites in the establishment and operation of the EIP and individual EIP projects, including project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of the applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed EIP and for conducting individual EIP projects.

d. Description and quality of plans to provide training opportunities in one or

more of these areas: (1) Providing training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students; (2) Providing training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel; (3) Acting as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

e. Description of a plan to solicit and secure financial and technical assistance from other public and private organizations (e.g., schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations, etc.) to supplement the core funding from CDC.

f. Quality of the proposed projects (as requested in the Application Content section above) regarding consistency with EIP guiding principles, public health needs, intent of this program, feasibility, methodology/approach, and collaboration/participation of partner organizations.

g. Identification of applicant's key professional personnel to be assigned to the EIP and EIP projects as well as key professional personnel from other participating or collaborating institutions, agencies, and organizations outside of the applicant's agency that will be assigned to EIP activities (provide curriculum vitae for each in an appendix). Clear identification of participants' respective roles in the management and operation of the EIP. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the EIP.

i. The extent to which the applicant clearly describes how the EIP or its design for the EIP is flexible and able to swiftly address new public health challenges in infectious diseases.

j. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Evaluation (10 points)

a. Extent to which the application includes Measures of Effectiveness that will be used to measure and demonstrate accomplishment of the identified objectives of the grant. Extent to which the measures are objective and quantitative and appear adequate to measure the intended outcome.

b. Quality of the plan for monitoring and evaluating scientific and operational accomplishments of the EIP and of individual EIP projects.

c. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

4. Understanding the Objectives of the EIP(5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EIP.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the EIP network.

5. Description of the Population Base of the EIP Area (5 points)

a. Clear definition of the geographic area and population base in which the EIP will operate. Detailed description of the demographics of the proposed population base.

b. Clear description of various special populations within the defined population base as they relate to the proposed activities of the EIP, such as the rural or inner-city poor, under-served women and children, the homeless, immigrants and refugees, and persons infected with HIV.

c. Extent to which the population base is demographically diverse.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program. Extent to which applicant shows both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP.

8. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in section ''A. Purpose'' of this announcement.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Home Page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management assistance, contact:

Yolanda Sledge, Grants Management Specialist, Procurement and Grants

Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2787, email address: *yis0@cdc.gov.*

For program technical assistance, contact: Catherine Rebmann, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone number: (404) 371–5363, email address: *csr9@cdc.gov.*

Dated: June 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15154 Filed 6–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02050]

Predictive Instrument Research in Technology to Reduce Medical Errors; Notice of Award

A. Purpose

The purpose of the program will be to build upon the lessons learned with clinical predictive instruments (CPIs) in cardiac diseases and to further develop and adapt this technology for use with other clinically important and expensive medical conditions and care.

B. Eligible Applicant

The only eligible applicant is New England Medical Center. No other applications were solicited.

The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized the New England Medical Center's unique qualifications for carrying out the activities specified in this grant (H.R. Rep. 107–342).

C. Availability of Funds

Approximately $346,146 is available in FY 2002 to fund one award. The award began June 1, 2002, and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: René Benyard, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Telephone: (770) 488–2722, email address: bnb8@cdc.gov.

For program technical assistance, contact: Steve L. Solomon, M.D., Program Management Official, Division of Health Care Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–55, Atlanta, GA 30333, Telephone: (404) 498–1124, email address: ssolomon@cdc.gov.

Dated: June 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15151 Filed 6–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02118]

Fellowship Training Programs in Vector-Borne Infectious Diseases; Notice of Availability of Funds; Correction

A notice announcing the availability of Fiscal Year 2002 funds to fund cooperative agreements for Fellowship Training Programs in Vector-Borne Infectious Diseases was published in the **Federal Register** on May 10, 2002, Vol 67, No. 91, pages 31813–31816. The notice is amended as follows: On page 31814, first column, Section C. Availability of Funds, Paragraph 1, should be corrected to read ''It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to five years.''

Dated: June 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15153 Filed 6–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 8 a.m.–5 p.m., July 1, 2002; 8 a.m.–5 p.m., July 2, 2002.

Place: Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado 80202, telephone (303) 295–5885, fax (303) 296–6352.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS, advice on methods of dose reconstruction which have also been promulgated as a final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the initial appointment of Board members. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on the draft Special

Exposure Cohort Petitioning Process Procedures, NIOSH-IREP concerns and model transparency, dose reconstruction workgroup discussion and issues, and Board discussion.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 841–4498, fax (513) 458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 12, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15273 Filed 6–14–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS), (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of proposal to modify or alter a System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS),'' System No. 09–70–0520. We propose to broaden the scope of this system to include the collection and maintenance of ESRD Core Indicators or Clinical Performance Measures (CPM). Data contained in CPM Data Set are being added to meet statutory requirements and to augment the usefulness of the information for research, quality improvement projects, and policy formulation. We are deleting routine use number 2 authorizing disclosures to organizations deemed qualified to carry out quality assessments; number 5, authorizing disclosures to a contractor; number 6, authorizing disclosures to an agency of a state government; and an unnumbered routine use which authorizes the release of information to the Social Security Administration (SSA).

Routine use number 2 is being deleted because it is not clear what ''organizations'' are being identified and who should receive information referred to in this routine use. We will add a new routine use to accomplish release of information in this system to ESRD Network Organizations and Quality Improvement Organizations (QIO) to carry out quality assessments, medical audits, quality improvement projects, and/or utilization reviews. Disclosures allowed by routine use number 6 and to SSA will be covered by a new routine use to permit release of information to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' Disclosures previously allowed by routine use number 5 will now be covered by proposed routine use number 1.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS' intention to disclose individual-specific information contained in this system. The proposed routine uses will be prioritized and reordered according to their proposed usage. We will also update any sections of the system that were affected by the recent reorganization and update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to maintain information on Medicare ESRD beneficiaries, non-Medicare ESRD patients, Medicare approved ESRD hospitals and dialysis facilities, and Department of Veterans Affairs (DVA) patients. The ESRD/PMMIS is used by CMS and the renal community to perform their duties and responsibilities in monitoring the Medicare status, transplant activities, dialysis activities, and Medicare utilization (inpatient and physician/supplier bills) of ESRD patients and their Medicare providers, as well as in calculating the Medicare covered periods of ESRD. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, ESRD Network Organizations and QIOs to implement quality improvement programs, facilitate research on the quality and effectiveness of care provided and payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 1, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this SOR or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESS: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Dennis Stricker, Director, Information Support Group, Office of Clinical Standards and Quality, CMS, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3116. The e-mail address is dstricker@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Background

The ESRD Program was established in 1972 pursuant to the provisions of 299I, Public Law 92–603. Notice of this system, ESRD/PMMIS was published in a **Federal Register** at 53 FR 62792 (Dec. 29, 1988), 61 FR 6645 (Feb. 21, 1996) (added unnumbered SSA use), 63 FR 38414 (July 16, 1998) (added three fraud and abuse uses), and 65 FR 50552 (Aug. 18, 2000) (deleted one and modified two fraud and abuse uses).

This system contains records on individuals with ESRD who are entitled to receive Medicare benefits or who are treated by DVA health care facilities. Data in this system are used primarily to meet and implement statutory requirements of Public Law (Pub. L.) 92–603, to meet other legislative requirements, support ESRD research, quality improvement projects, and public service programs.

The legislation (§ 299I, Pub. L. 92–603) extended Medicare coverage to individuals with ESRD who require dialysis or transportation to sustain life. This legislation and subsequent regulations also established health and safety standards applicable to providers of ESRD services and required the establishment of ESRD Network Coordinating Councils. The ESRD Networks were established to serve as liaisons between the federal government and the provider of ESRD services. This rule contained an additional requirement of the Omnibus Reconciliation Act of 1986 (Pub. L. 99–509) required that the Secretary establish a national ESRD registry. This registry is called the United States Renal Data System (USRDS). The contract to administer the USRDS was awarded by the National Institutes of Health (NIH) to the Urban Institute on May 1, 1988, for a 5 year period. This registry utilizes data reported by network organizations, transplant centers, and other sources to support the analysis of alternative treatment modes, the evaluation of allocation of resources, the analysis of morbidity and mortality trends and other quality of care indices, and other studies that assist the Congress in evaluating the ESRD program. The second 5 year contract was awarded to the University of Michigan on July 1, 1993. A 12 month extension was then executed for the period of performance of July 1, 1999 to June 30, 1999. A 4 month extension was then granted July 1, 1999. The next 5 year contract was awarded to the Minneapolis Medical Research Foundation on July 1, 1999.

Public Law 95–292 established the ESRD/PMMIS. The PMMIS was created in response to the CMS requirement to provide information on ESRD patients once the above legislation ensured that Medicare would pay for the dialysis treatments and kidney transplants required to sustain a patient's life. The ESRD/PMMIS is a mission critical system to the renal community. The PMMIS was a batch-oriented Model 204 (M204) data system, which later evolved into the Renal Beneficiary and Utilization System (REBUS) M204 on-line system. The acronym PMMIS is retained by a group of data files that have been available to the ESRD community since the batch system was created. The files remain an important product of REBUS operations and retain the PMMIS name for purposes of easy identification by interested users. Thus, the REBUS serves as the primary access mechanism for the PMMIS. We currently have over 1 million individual Master File records in REBUS. Data is supplied to REBUS by approximately 4,637 dialysis and or transplant facilities via the 18 ESRD Networks, and the United Network for Organ Sharing.

Data contained in the Clinical Performance Measures (CPM) Data Set is being added to the ESRD/PMMIS system of records in order to meet statutory requirements and to augment the usefulness of the information for research, quality improvement projects, and policy formulation. CPM data set was developed in response to section 4558(b) of the Balanced Budget Act of 1997, which required the Secretary to develop and implement a method to measure and report the quality of dialysis services under the Medicare program by the year 2000. CPM contains information, in the form of quality measures, on entitled ESRD beneficiaries who receive hemodialysis or peritoneal dialysis treatments. These quality measures are designed based on the National Kidney Foundation-Kidney Disease Outcomes Quality Initiative (K/DOQI) Clinical Practice Guidelines. These quality measures and their respective dimensions presently comprising the CPM are as follows:

- Hemodialysis Adequacy
  - Monthly Measurement of Delivered Hemodialysis Dose
  - Method of Measurement of Delivered Hemodialysis Dose
  - Minimum Delivered Hemodialysis Dose
  - Method of Post-Dialysis Blood Urea Nitrogen (BUN) Sampling
  - Baseline Total Cell Volume Measurement of Dialysis Intended for Reuse
- Peritoneal Dialysis Adequacy
  - Measurement of Total Solute Clearance at Regular Intervals
  - Calculate Weekly Kt/V urea and Creatinine Clearance in a Standard Way
  - Delivered Dose of Peritoneal Dialysis
- Vascular Access
  - Maximizing Placement of Arterial Fistulae
  - Minimizing Use of Catheter as Chronic Dialysis Access
  - Preferred/Non-Preferred location of Hemodialysis Catheters located above the waist
  - Monitoring Arterial Venous Grafts for Stenosis
- Anemia Management
  - Target Hematocrit or hemoglobin for Epoetin Therapy
  - Assessment of Iron Among Anemic Patients or Patients Prescribed Epoetin
  - Maintenance of Iron-stores Target
  - Administration of Supplemental Iron
- Serum Albunin

B. Statutory and Regulatory Basis for System

Authority for maintenance of the system is given under sections 226A, 1875, and 1881 of the Social Security Act (the Act) (Title 42 United States Code (U.S.C.), sections 426–1, 1395ll, and 1395rr).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information related to individuals with ESRD who receive Medicare benefits or who are treated by DVA health care facilities. The system contains information on both the beneficiary and the provider of services. The system contains beneficiary/patient medical records, claims data, and payment data collected from several non-reimbursement data collection instruments and Medicare bills. The provider of services' name, address, Medicare identification number, types of services provided, certification and or termination date, and ESRD network number.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PMMIS information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of PMMIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,* monitoring the Medicare status, transplant activities, dialysis activities, and Medicare utilization of ESRD patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4.Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PMMIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Determine compliance with the Federal conditions that an ESRD facility must meet in order to participate in Medicare.

Other Federal or State agencies in their administration of a federal health program may require PMMIS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require PMMIS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

In addition, disclosure under this routine use shall be used by state agencies pursuant to agreements with the HHS for determining Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under titles IV, XVIII, and XIX of the Act, and for the administration of the Medicare program. Data will be released to the state only on those individuals who are patients under the services of a program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require PMMIS information for auditing eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

3. To ESRD Network Organizations and Quality Improvement Organizations in connection with review of claims, or in connection with studies or quality improvements projects or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

ESRD Network Organizations and QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and its state agencies. The Networks and QIOs will assist the state agencies in related monitoring and enforcement efforts; assist CMS and intermediaries in program integrity assessment; and prepare summary information for release to CMS.

4. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration, improvement, or maintenance of health, or payment-related projects.

PMMIS data will provide for the research, evaluations and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries with ESRD. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to these Medicare beneficiaries and the policy that governs the care.

5. To Members of Congress or to congressional staff members in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PMMIS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The PMMIS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office of Management and Budget (OMB) Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the PMMIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain

Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.

• Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System On Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only collect the minimum personal data necessary to achieve the purpose of PMMIS. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 1, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0520

SYSTEM NAME:

End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), HHS// CMS/OCSQ.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various other remote locations (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with ESRD who receive Medicare benefits or who are treated by Department of Veteran Affairs (DVA) health care facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on both the beneficiary and the provider of services. The system contains beneficiary/patient medical records, claims data, and payment data collected from several non-reimbursement data collection instruments and Medicare bills. The information contains the provider's name, address, Medicare identification number, types of services provided certification and or termination date, and ESRD network number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under sections 226A, 1875, and 1881 of the Social Security Act (the Act)(Title 42 United States Code (U.S.C.) 426–1, 1395ii, and 1395rr).

PURPOSE(S):

The primary purpose of the system of records is to maintain information on Medicare ESRD beneficiaries, non-Medicare ESRD patients, Medicare approved ESRD hospitals and dialysis facilities, and DVA patients. The ESRD/PMMIS is used by CMS and the renal community to perform their duties and responsibilities in monitoring the Medicare status, transplant activities, dialysis activities, and Medicare utilization (inpatient and physician/supplier bills) of ESRD patients and their Medicare providers, as well as in calculating the Medicare covered periods of ESRD. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, ESRD Network organizations and QIOs to implement quality improvement programs, facilitate research on the quality and effectiveness of care provided and payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PMMIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized

by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Determine compliance with the Federal conditions that an ESRD facility must meet in order to participate in Medicare.

3. To ESRD Network Organizations and Quality Improvement Organizations in connection with review of claims, or in connection with quality improvements projects, studies, or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

4. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration, improvement, or maintenance of health, or payment-related projects.

5. To Members of Congress or to congressional staff members in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media or hard paper copy.

RETRIEVABILITY:

All Medicare records are accessible by health insurance claim number, individual's name, or the provider identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the PMMIS system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.,* security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Support Group, Office of Clinical Standards and Quality, CMS, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, provider identification number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are obtained from Medicare ESRD medical evidence reports, kidney transplant reports, ESRD beneficiary reimbursement method selection forms, ESRD death notification forms, Medicare bills, CMS Medicare Master files, ESRD facility surveys, ESRD facility certification notices, and the Medicare/Medicaid Automated Certification System (MMACS).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

1. ESRD Network of New England, Incorporated, Post Office Box 9484, New Haven, Connecticut 06534.
2. ESRD Network of New York, Incorporated, 1249 Fifth Avenue, A–419, New York, New York 10029.
3. Trans-Atlantic Renal Council, Cranbury Plaza, 2525 Route 130-Building C, Cranbury, New Jersey 08512–9595.
4. ESRD Network Organization Number 4, 200 Lothrop Street, Pittsburgh, Pennsylvania 15213–2582.
5. Mid-Atlantic Renal Coalition, 1527 Huguenot Road, Midlothian, Virginia 23113.
6. Southeastern Kidney Council, Incorporated, 1000 Saint Albans Drive, Suite 270, Raleigh, North Carolina 27609.
7. ESRD Network of Florida, Incorporated, One Davis Boulevard, Suite 304, Tampa, Florida 33606.
8. Network 8, Incorporated, Post Office Box 55868, Jackson, Mississippi 39296–5868.
9 & 10. The Renal Network, Incorporated, 911 East 86th Street, Suite 202, Indianapolis, Indiana 46240.
11. Renal Network of the Upper Midwest, 970 Raymond Avenue #205, Saint Paul, Minnesota 55114.
12. ESRD Network Number 12, 7509 NW T Tiffany Spring Parkway, Suite 105, Kansas City, Missouri 64153.
13. ESRD Network Organization Number 13, 6600 North Meridan Avenue, Suite 155, Oklahoma City, Oklahoma 73116–1411.
14. ESRD Network of Texas, Incorporated, 14114 Dallas Parkway, Suite 660, Dallas, Texas 75240–4349.
15. Intermountain ESRD Network, Incorporated, 1301 Pennsylvania Street, Suite 220, Denver, Colorado 80203–5012.
16. Northwest Renal Network, 4702 42nd Avenue, Seattle, Washington 98116.
17. TransPacific Renal Network, 25 Mitchell Boulevard, Suite 7, San Rafael, California 94903.
18. Southern California Renal Disease Council, 6255 Sunset Boulevard, Suite 2211, Los Angeles, California 90082.

[FR Doc. 02–15007 Filed 6–14–02; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Administrative Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: States.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State TANF plan	54	1	30	1,620
Title Amendments	54	1	3	162

Estimated Total Annual Burden Hours: 1782

Additional Information: Copies of the proposed collection can be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of pubublication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 28, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–15115 Filed 6–14–02; 8:45 am]
BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees; Veterinary Medicine Advisory Committee; Extension of Nomination Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of nomination period.

SUMMARY: The Food and Drug Administration (FDA) is extending the nomination period for voting members to serve on the Veterinary Medicine Advisory Committee (VMAC) in one of the following specialty areas: Pharmacology, Minor Species/Minor Use Veterinary Medicine, and pathology. Nominations for the VMAC chairperson are also being solicited. This request for nominations was announced in the **Federal Register** of May 13, 2002 (67 FR 32055). FDA has been asked to extend the nominations period to allow additional time for the submission of nominations.

DATES: Nominations should be received by June 30, 2002.

ADDRESSES: All nominations for representatives should be sent to Aleta Sindelar (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Aleta Sindelar, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, e-mail: asindela@cvm.fda.gov.

Dated: June 6, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–15111 Filed 6–14–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (OMB No. 0915–0047)—Revision

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of rights and responsibilities, that schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use improved information technology to manage the information required by the regulations.

The estimated total annual burden is 34,558 hours. The burden estimates are as follows:

RECORDKEEPING REQUIREMENTS

Regulatory/section requirements	Number of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2), Documentation of Cost of Attendance	275	1.17	322
57.208(a), Promissory Note	275	1.25	344
57.210(b)(1)(i), Documentation of Entrance Interview	275	1.25	344
57.210(b)(1)(ii), Documentation of Exit Interview	[1] 302	0.33	100
57.215(a)&(d), Program Records	[1] 302	10	3,020
57.215(b), Student Records	[1] 302	10	3,020
57.215(c), Repayment Records	[1] 302	18.75	5,663
HPSL Subtotal	302	.....	12,813
NSL Program:			
57.306(b)(2)(ii), Documentation of Cost of Attendance	347	0.3	104
57.308(a), Promissory Note	347	0.5	174
57.310(b)(1)(i), Documentation of Entrance Interview	347	0.5	174
57.310(b)(1)(ii), Documentation of Exit Interview	[1] 607	0.17	103
57.315(a)(1)&(a)(4), Program Records	[1] 607	5	3,035
57.315(a)(2), Student Records	[1] 607	1	607
57.315(a)(3), Repayment Records	[1] 607	2.5	1,518
NSL Subtotal	607	.....	5,715

[1] Includes active and closing schools.

REPORTING REQUIREMENTS

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
HPSL Program:					
57.205(a)(2), Excess Cash	Burden included under 0915–0044 and 0915–0045				
57.206(a)(2), Student Financial Aid Transcript	3,750	1	3,750	.25	938
57.208(c), Loan Information Disclosure	275	69	18,975	.0833	1,581
57.210(a)(3), Deferment Eligibility	Burden included under 0915–0044				
57.210(b)(1)(i), Entrance Interview	275	69	18,975	.0167	3,169
57.210(b)(1)(ii), Exit Interview	[1] 302	12	3,624	0.5	1,812
57.210(b)(1)(iii), Notification of Repayment	[1] 302	31	9,362	0.167	1,563
57.210(b)(1)(iv), Notification During Deferment	[1] 302	24	7,248	0.0833	604
57.210(b)(1)(vi), Notification of Delinquent Accounts	[1] 302	10	3,020	0.167	504
57.210(b)(1)(x), Credit Bureau Notification	[1] 302	8	2,416	0.6	1,450
57.210(b)(4)(i), Write-off of Uncollectible Loans	20	1	20	0.5	10
57.211(a) Disability Cancellation	8	1	8	.75	6
57.215(a) Reports	Burden included under 0915–0044				
57.215(a)(2), Administrative Hearings	0	0	0	0	0

REPORTING REQUIREMENTS—Continued

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
57.215(a)(d), Administrative Hearings	0	0	0	0	0
HPSL Subtotal	4,052		67,398		11,637
NSL Program:					
57.305(a)(2), Excess Cash	Burden included under 0915–0044 and 0915–0046				
57.306(a)(2), Student Financial Aid Transcript	2,250	1	2,250	0.25	563
57.310(b)(1)(i), Entrance Interview	347	24	8,328	0.167	1,391
57.310(b)(1)(ii), Exit Interview	[1] 607	4	2,428	0.5	1,214
57.301(b)(1)(iii), Notification of Repayment	[1] 607	6	3,642	0.167	608
57.310(b)(1)(iv), Notification During Deferment	[1] 607	1	607	0.083	50
57.310(b)(1)(vi), Notification of Delinquent Accounts	[1] 607	5	3,035	0.167	507
57.310(b)(1)(x), Credit Bureau Notification	[1] 607	8	4,856	0.6	2,914
57.310(b)(4)(i), Write-off of Uncollectible Loans	20	1.0	20	0.5	10
57.311(a), Disability Cancellation	7	1.0	7	0.8	6
57.312(a)(3), Evidence of Educational Loans	Inactive Provision				
57.315(a)(1), Reports	Burden included under 0915–044				
57.315(a)(1)(ii), Administrative Hearings	0	0	0	0	0
57.316(a)(d), Administrative Hearings	0	0	0	0	0
NSL Subtotal	2,857		25,173		7,263

[1] Includes active and closing schools.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 11, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–15161 Filed 6–14–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Activity Dependent Neurotrophic Factor (ADNF) III

AGENCY: National Institutes of Health, Public Health Services, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 60/037,404 filed February 7, 1997 and entitled ''Activity Dependent Neurotrophic Factor (ANDF) III,'' PCT application PCT/US98/02485 filed on February 6, 1998 and entitled ''Activity Dependent Neurotrophic Factor (ANDF) III,'' U.S. Continuation-in-Part application 09/187,330 filed on November 6, 1999 and entitled ''Activity Dependent Neurotrophic Factor III (ANDF III),'' PCT application PCT/US99/26213 filed February 4, 1999 and entitled ''Activity Dependent Neurotrophic Factor (ANDF) III,'' U.S. provisional patent application 60/208,944 filed on May 31, 2000 and entitled ''Use of Activity-Dependent Neurotrophic Factor-Derived Polypeptides for Enhancing Learning and Memory,'' U.S. provisional patent application 60/267,805 filed on February 8, 2001 and entitled ''Prenatal Treatment with ADNF Polypeptides to Improve Learning and Memory,'' PCT application PCT/US01/17758 filed on May 31, 2001 and entitled ''Use of Activity Dependent Neurotrophic Factor Derived Polypeptide for Enhancing Learning and Memory: Pre- and Post-Natal Administration.'' U.S. patent application 09/267,511 filed on March 12, 1999, PCT application PCT/US00/06364 filed on March 10, 2000 and entitled ''Prevention of Fetal Alcohol Syndrome and Neuronal Cell Death with ADNF Polypeptides,'' U.S. provisional patent application 60/149,956 filed on August 18, 1999, and PCT application PCT/US00/22861 filed on August 17, 2000, and entitled ''Orally Active Peptides that Prevent Cell Damage and Death,'' to Allon Therapeutics, of San Diego California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use will be all neurodegenerative diseases, but may be limited to Alzheimer's disease and stroke.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before August 16, 2002, will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Jonathan V. Dixon, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301.496.7056, x270; Facsimile 301.402.0220; email *dixonj@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The above-referenced patent(s)/patent application(s) relate to Activity

Dependent Neurotrophic factor III (ADNF III) and a specific eight amino acid peptide denoted as NAP (NAPVSIQ) derived from the cloned ADNF III. NAP has been discovered to have potent neuroprotective properties in vitro and in vivo. NAP has been shown to significantly reduce the number of apoptotic cells and to protect neurons against numerous toxins and cellular stresses including in vitro exictotoxicity, oxidative stress, and glucose deprivation. NAP also exhibits neuroprotective activity in a variety of animal models including a learning deficient apolipoprotein E knockout mice (a model related to Alzheimer's disease), mouse paradigms of traumatic head injury (associated with an inflammatory response) and fetal alcohol syndrome (oxidative stress), and a rat model of cholinotoxicity.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 28, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–15147 Filed 6–14–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Cytotoxic Treatment of Cancer Cells That Overexpress Matrix Metalloproteinases, Plasminogen Activators and/or Plasminogen Activator Receptors

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application, 60/155,961 (refiled): ''Mutated anthrax toxin protective antigen proteins that specifically target cells containing high amounts of cell-surface metalloproteinase or plasminogen activator receptors' (DHHS Ref. E–293–99/0); PCT Patent Application, PCT/US00/26192 [WO01/21656] (refiled): ''Mutated anthrax toxin protective antigen proteins that specifically target cells containing high amounts of cell-surface metalloproteinase or plasminogen activator receptors' (DHHS Ref. E–293–99/1); U.S. Patent Application, S/N 10/088,952: ''Mutated anthrax toxin protective antigen proteins that specifically target cells containing high amounts of cell-surface metalloproteinase or plasminogen activator receptors' (DHHS Ref. E–293–99/2); U.S. Patent 5,591,631, S/N 08/021,601, which issued on January 7, 1997 (DHHS Ref. E–064–93/0), entitled, ''Anthrax toxin fusion proteins, nucleic acid encoding same''; U.S. Patent 5,677,274, S/N 08/082,849, which issued on October 14, 1997 (DHHS Ref. E–064–93/1), entitled, ''Anthrax toxin fusion proteins and related methods''; and any related foreign filed national stage applications claiming priority to such cases to OncoTac Pharmaceuticals which is located in Medicon Valley, Denmark. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of cancer by a mechanism involving cancer-associated enzymes and/or receptors.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before August 16, 2002, will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X287; Facsimile: (301) 402–0220; and E-mail: *rodrigur@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The primary technology relates to an immunotoxin treatment system that is targeted to cancer cells via an anthrax-based pathway. Native anthrax toxin is a three-component toxin consisting of protective antigen (PrAg), lethal factor (LF), and edema factor (EF). PrAg binds to the recently identified cell surface anthrax receptor and the subsequent steps in toxin action is dependent on cleavage of PrAg at the sequence, ^{164}RKKR^{167}, by a cell-surface, furin-like protease. The carboxyl-terminal 63-kDa fragment (PrAg63) remains bound to receptor, forms a heptamer, and binds and internalizes LF and EF. LF kills animals and lyses mouse macrophages due to proteolytic cleavage of MAP kinase kinases. EF damages cells due to its intracellular adenylate cyclase activity. A potent PrAg dependent cytotoxin, FP59, created by fusing LF amino acids 1–254 to the ADP-ribosylation domain of *Pseudomonas* exotoxin A can kill any cell having receptors for PrAg and the ability to activate PrAg by cleavage at amino acids 164–167.

Activation of the native PrAg is dependent on a cell surface located furin-like proteolytic activity. In the current technology, the furin-site has been manipulated to generate mutant PrAg proteins that are specific for matrix metalloproteinases (MMPs) or the urokinase plasminogen activator (uPA). A combination of the mutated toxins PrAg and FP59 has been shown to be an effective cytotoxic agent that is strictly dependent on cell surface localized MMP and/or uPA-activity.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 7, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–15148 Filed 6–14–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Withdrawal of Group II Portion of Guidance for Applicants SM 02–009, Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Notice of withdrawal of Group II portion of Guidance for Applicants SM 02–009, Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults.

SUMMARY: This notice is to inform the public that the SAMHSA/CMHS is withdrawing the Group II portion of the Guidance for Applicants (GFA) No. SM 02–009, Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults (Short Title: Older Adult Mental Health Services). The application date for this GFA is June 19, 2002. The Group II award is for a National Technical Assistance Center for the Mental Health Needs of Older Adults. The Group I component of the program is unaffected by this announcement.

SAMHSA/CMHS will substantially revise and reissue the Group II component of the GFA for funding in Fiscal Year 2002. SAMHSA/CMHS believes that it is programatically advantageous to remove the PRISMe element, which was work begun under a previous award, from the general technical assistance element. This will enable the National Technical Assistance Center to focus on the core technical assistance and information dissemination functions of the Center while allowing the Government Project Officer to maintain a direct connection with the PRISMe project. Check the **Federal Register** and the SAMHSA web site for notice of the new announcement at *http://www.samhsa.gov/.*

Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults grants support the adoption and implementation of evidence-based practices related to the delivery and organization of services for older adults with serious serious mental illness or who are at risk for serious mental illness. Awards for the Group I component of this program are limited to a maximum of $400,000 in total costs. The award for the Group II component is limited to a maximum of $1,400,000.

Program Contact: For questions concerning program issues, contact: Betsy McDonel Herr, Ph.D., Community Support Program, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2197, Fax 301–443–0541, E-mail: *bmcdonel@samhsa.gov.*

Dated: June 12, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–15333 Filed 6–13–02; 2:59 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–17]

Notice of Proposed Information Collection: Comment Request; Eligibility of a Nonprofit Corporation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due Date: August 16, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those whoa re to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Eligibility of a Nonprofit Corporation.

OMB Control Number, if applicable: 2502–0057.

Description of the need for the information and proposed use: This information collection is needed to enable HUD to determine the qualifications of a nonprofit to successfully sponsor a multifamily housing project. A nonprofit is defined as an entity organized for reasons other than financial gain. The information collected will also be used to determine the nonprofit's motive for sponsoring the project and identify any contractual relationship that exists between HUD and the nonprofit.

Agency Form numbers, if applicable: HUD–3433, HUD–3434, and HUD–3435.

Estimation of the total number of hours need to prepare the information collection including the number of respondents, frequency of response, and hours of response: The estimated total number of annual hours needed to prepare the information collection is 90; the number of respondents is 270 generating 270 annual responses; the frequency of response is on occasion or once during the application periods; and the estimated time needed per response varies from 15 minutes to 45 minutes.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 7, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–15120 Filed 6–14–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–24]

Notice of Submission of Proposed Information Collection to OMB; Consumer Protection Measures Against Excessive Fees for Participants of the Home Equity Conversion Mortgages (HECM) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 17, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Joseph_F._Lackey_Jr@OMB.EOP.GOV*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Consumer Protection Measures Against Excessive Fees for Participants of the Home Equity Conversion Mortgages (HECM) Program.

OMB Approval Number: 2502–0534.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Consumer Protection Measures for Participants of the Home Equity Conversion Mortgages (HECM) Program ensure disclosures to protect the homeowners in the program from incurring excessive fees for third-party services.

Respondents: Businesses and other for-profits, Individuals or households.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	32,000	32,000		0.2		6,800

Total Estimated burden Hours: 6,800.

Status: Reinstatement of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–15121 Filed 6–14–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4769–N–02]

Notice of Availability of HUD Information Quality Guidelines: Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD is extending the public comment period on its draft guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public by HUD. These guidelines, referred to as HUD's ''Information Quality Guidelines,'' are available for review and comment on HUD's website at *www.hud.gov.*

DATES: *Comments Due Date:* July 17, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Comments may be submitted electronically to HUD through internet email by sending to the following address: *Quality_Info@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, Room 3146, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION: By notice published on May 30, 2002 (67 FR 38751), HUD advised the public that section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554)

directed the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' Within one year after OMB issues its guidelines, agencies must issue their own guidelines that will describe internal mechanisms by which agencies will ensure that their information meets the standards of quality, objectivity, utility and integrity. The mechanism also must allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.

OMB issued its final guidelines on September 28, 2001 (66 FR 49718), but requested additional comment on one component of the OMB guidelines. The OMB guidelines addressing additional public comment were published on January 3, 2002 (67 FR 369), and republished on February 22, 2002 (67 FR 6452). In accordance with the statute, agencies must issue their final guidelines by October 1, 2002. The agencies' draft guidelines need not be published in the **Federal Register**, but agencies should provide notification in the **Federal Register** that the draft guidelines are available on agencies' websites.

HUD announced the availability of its draft guidelines for review on HUD's website by **Federal Register** notice published on May 30, 2002 (67 FR 37851). The May 30, 2002, notice solicited public comments through July 1, 2002.

This notice published in today's **Federal Register** advises the public that HUD is extending the public comment period to July 17, 2002.

Dated: June 10, 2002.

Vickers B. Meadows,

Assistant Secretary for Administration.

[FR Doc. 02–15119 Filed 6–14–02; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Northwest California Resource Advisory Council, Ukiah, California.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Wednesday and Thursday, July 17 and 18, 2002, for a field tour and business meeting.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Wednesday, July 17, at the Yolo County Regional Park, 10 miles north of Rumsey, on California Highway 16. The members will depart immediately for a field tour and raft trip through parts of the BLM Cache Creek Natural Area. On Thursday, July 18, the business meeting begins at 8 a.m. in the Conference Room of the Ukiah Field Office, 2550 North State St., Ukiah. Agenda items include an update on Headwaters Forest Reserve Planning, review of the draft management plan and Environmental Impact Statement for the Cache Creek Natural Area, a status report on the BLM's vegetation management EIS, and a status report on planning for the South Spit. Time will be set aside for public comments.

Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION: Contact Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300, or Public Affairs Officer Joseph J. Fontana at (530) 252–5332.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–15203 Filed 6–14–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1820–AE]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Northeast California Resource Advisory Council, Cedarville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, July 11 and 12, 2002, at the BLM Surprise Field Office, 602 Cressler St., Cedarville, California.

SUPPLEMENTARY INFORMATION: The meeting begins Thursday, July 11, at 9 a.m. at the Surprise Field Office. Members will convene, then depart for a field tour in the Homecamp area. On Friday, July 12, the business meeting begins at 8 a.m. in the Conference Room of the Surprise Field Office. Agenda items include sage grouse conservation planning, the Homecamp land acquisition proposal, land use planning for the Black Rock Desert-High Rock Canyon-Emigrant Trails National Conservation Area, and development of a juniper management strategy. Time will be set aside at 1 p.m. for public comments. Depending on the number of persons wishing to address the council, a time limit could be established.

FOR FURTHER INFORMATION: Contact BLM Alturas Field Manager Tim Burke at (530) 257–4666, or Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–15204 Filed 6–14–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–41]

Mediplas Innovations; Suspension of Shipments

By Orders dated August 14, 2000, the Administrator of the Drug Enforcement Administration (DEA) suspended two shipments, one for 518.5 kilograms of ephedrine, and another for 798.55 kilograms of pseudoephedrine, from Getz Pharma, Karachi, Pakistan, to Mediplas Innovations, Inc. of San Antonio, Texas. According to the two Orders To Suspend Shipment (OTSS), the suspension was based on the facts that: (1) Mediplas was disqualified as a regular importer pursuant to 21 U.S.C. 971(b)(2) on December 22, 1999, requiring it to provide the DEA with a 15-day advance notification for each import of listed chemicals; (2) Mediplas failed to timely notify DEA of these shipments, in violation of 21 CFR 1313.31 (2000); (3) Mediplas's pseudoephedrine products have been found at clandestine laboratories, and at laboratory dumpsites; and (4) Mediplas's only customer for this product, Wholesale Outlet, is the current subject of an active DEA investigation as a possible source of diversion.

By letter dated September 8, 2000, Mediplas Innovations, Inc. requested a hearing in this matter. A hearing was held before Administrative Law Judge Gail A. Randall in Arlington, Virginia, on December 20–21, 2000, and on January 31 and February 1, 2001, in Houston, Texas. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument. On October 4, 2001, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusion of Law, and Decision, recommending that the Administrator find DEA was not justified in issuing the OTSS and that said OTSS should be terminated and the chemicals released to Mediplas. On October 24, 2001, the Government filed Exceptions to the Administrative Law Judge's Opinion and Recommended Ruling (Exceptions). Thereafter, on November 20, 2001, Judge Randall transmitted the record of these proceedings to the Deputy Administrator for final decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Findings of Fact of the Administrative Law Judge, and rejects the Conclusions of Law, except as hereinafter set forth. Furthermore, the Deputy Administrator rejects the recommendation of the Administrative Law Judge.

Mr. Laeeq Ahmed is the proprietor of Mediplas Innovations, Inc. (Mediplas). After a military career in the Pakistani Air Force, Mr. Ahmed worked for two years as a consulting project manager in Pakistan. In 1991, he came to the United States. Initially, he worked for his brother in restaurant management in Texas. After approximately one and one-half years, he established his own retail store, a convenience store. While operating this convenience store, he began importing novelty items. He also sold groceries, novelties, office supplies, and over-the-counter medicines, to include an ephedrine product, ''Mini Thins,'' in 60 count bottles. He only purchased Mini Thins from a wholesaler in small quantities, however, usually one to two dozen bottles at a time.

Mr. Ahmed has been an importer for approximately four or five years. He wanted to enter the pharmaceutical manufacturing market. After investigating the manufacturing process in Pakistan from Getz Pharmaceutical. Prior to arranging the exportation of ephedrine or pseudoephedrine from Pakistan, Mr. Ahmed obtained approval from the Health Ministry, the Narcotics Division, the Customs Division, and the Ministry of Exports in Pakistan. He also received approval from the World Health Organization.

Mr. Ahmed worked closely with the San Antonio office of the DEA as he created his new business. On December 12, 1998, Mediplas submitted an application to the DEA for registration as an importer of ephedrine. In March of 1999, the DEA conducted a pre-registration investigation, inspecting Mediplas's proposed registered location, and providing Mr. Ahmed with copies of the applicable provisions from the Code of Federal Regulations. Mr. Ahmed was reminded by DEA personnel to report suspicious orders of listed chemicals to the DEA. Mr. Ahmed was also provided information regarding the illicit use of List I chemicals as precursor chemicals in the illicit manufacture of methamphetamine. Specifically, Mr. Ahmed was provided a ''Red Warning Notice'' that advised him about the seizure at clandestine methamphetamine laboratories of combination ephedrine and pseudoephedrine products. The DEA subsequently identified the parent company of Getz Pharma, identified its corporate officers, located its web site, and located its Pakistan, U.S., and other overseas offices. On August 4, 1999, representatives from the DEA again visited Mediplas's location to obtain additional information. Mr. Ahmed fully cooperated with the representatives.

Judge Randall found Mr. Ahmed credibly concurred in his testimony that, prior to registered with the DEA, Mediplas had received information about the importer registration process, the DEA rules, regulations, and procedures pertaining to the importation and handling of ephedrine and pseudoephedrine, and the procedures DEA used to communicate with licensed importers. Also as part of the pre-registration inspection of Mediplas, the DEA conducted criminal record checks and state and local agency checks, with negative results.

Mr. Ahmed informed the DEA that Mediplas's entire business was handling List I chemicals. Mediplas intended to import finished tablets packaged in sealed bottles, shrink wrapped, boxed, and in cartons.

Mr. Ahmed also agreed to provide the DEA with a list of prospective customers, and to keep this list accurate. Mr. Ahmed agreed not to distribute any Mediplas products to entities not registered with the DEA to handle listed chemicals. The record contains no evidence that Mr. Ahmed has failed to adhere to his agreement.

On April 29, 1999, the DEA issued Mediplas DEA Certificate of Registration number 004230MNX, that granted Mediplas authorization to import ephedrine. Mediplas also obtained a permit from the State of Texas to handle precursor chemicals.

Mediplas imported its first ephedrine products after April of 1999. Initially, Mediplas's ephedrine product was labeled ''Mini Twin,'' but this name was later changed to ''Min Twin.'' Mr. Ahmed credibly testified that he had seen Mediplas products on display at convenience stores and gas stations located in Houston, Texas and between Houston and San Antonio, Texas.

On October 25, 1999, Mr. Ahmed submitted a letter to the DEA, indicating his desire to add pseudoephedrine to his DEA registration. Mr. Ahmed requested DEA provide guidance on the procedures he should follow to add pseudoephedrine to his registration. Subsequently, in the early part of 2000, Mr. Ahmed also spoke to a DEA representative at the DEA Headquarters about modifying the Certificate of Registration so that Mediplas could import pseudoephedrine. By letter dated January 4, 2000, Mr. Ahmed informed a DEA Diversion Investigator (DI) that Mediplas's application for registration to handle pseudoephedrine had been approved by the FDA.

Mediplas named its pseudoephedrine product Twin Pseudo. Mediplas imported Twin Pseudo in 120 count bottles. Mediplas did not distributed this product to retail outlets; it only sold this product to its sole distributor, Wholesale Outlet, On April 10, 2000, DEA Report of Investigation was prepared noting that Mediplas's registration was modified to authorize it to import pseudoephedrine. By letter dated February 15, 2000, however Mr. Ahmed informed the DI of the arrival of an importation of pseudoephedrine and the subsequent sale of that shipment to Wholesale Outlet. Mr. Ahmed enclosed a copy of the sales of that shipment to Wholesale Outlet. Mr. Ahmed enclosed a copy of the sales report concerning this shipment.

Further, from DEA reports of investigation, and based on Mediplas invoices dated between November 1999, to April 6, 2000, the DEA reported that, (1) on January 13, 2000, Mediplas purchased its first shipment of Twin Pseudo, and the report noted the 11 batch numbers and quantities purchased; (2) on January 25, 2000, Mediplas purchased its second shipment of Twin Pseudo, and the

report noted the quantities and the 7 batch numbers of the product purchased; (3) on February 7, 2000, Mediplas sold its first shipment of Twin Pseudo to Wholesale Outlet; (4) on March 1, 2000, Mediplas sold its second shipment of Twin Pseudo to Wholesale Outlet. On April 6, 2000, the DEA served an administrative subpoena upon Mediplas. DEA representatives reviewed receiving and distribution records, and conducted an on-site inspection. An inventory was also conducted and an accountability audit was performed. Mr. Ahmed was advised that there were no discrepancies found during this investigation.

Pseudoephedrine is a List I chemical pursuant to 21 CFR 1310.02(a)(11). A transaction involving more than one kilogram of pseudoephedrine in a month requires a fifteen day advance notification to the DEA. Pseudoephedrine is a legitimately imported and distributed product used in the manufacture of nasal decongestants. Pseudoephedrine is also a precursor chemical used in the illicit manufacture of methamphetamine.

Ephedrine is a List I chemical pursuant to 21 CFR 1310.02(a)(3). Any entity importing any quantity of ephedrine must notify the DEA fifteen days in advance of the importation. Ephedrine is a legitimately imported and distributed product used in the production of bronchial dilators and asthma relief medication. Ephedrine is also a precursor chemical used in the illicit manufacture of methamphetamine.

Methamphetamine is a Schedule II controlled substance having approved uses when taken under a physician's supervision as an FDA-approved treatment for attention deficit disorder with hyperactivity, as a treatment for obesity as a short term adjunct in a regimen of weight reduction, and as a treatment for narcolepsy. Methamphetamine also has a high abuse potential, however, being ranked among the top five controlled substances for abuse. Illicit methamphetamine is often manufactured in clandestine laboratories, often organized by crime groups. The record shows the majority of illicit methamphetamine laboratories currently utilize tablets of ephedrine and pseudoephedrine in the production process. These substances are interchangeable with respect to the manufacture of methamphetamine.

Prior to importing ephedrine and over-the-threshold amounts of pseudoephedrine products, each importer is required to provide the DEA with notice 15 days prior to the importation of the product into the U.S. The purpose of the 15-day notice is to allow the DEA time to evaluate the proposed import and to determine whether there exits grounds to believe that the proposed import may be diverted.

To accomplish this notification the importer must use the DEA Form 486 (Form 486). The DEA considers notification has occurred when the agency physically receives the Form 486, as indicated by the agency date stamp on the form. The importer may submit the form by mail or by electronic facsimile, and approximately 99 percent of Form 486s are received by the DEA via facsimile. In the event that the actual date of the import does not match the date projected on the Form 486, the importer is requested to file an amended Form 486, showing the actual date of importation. Mediplas has filed such amended Form 486s.

When an importer fails to file the Form 486 in a timely manner, a record is created and maintained by DEA. If these violations become repetitive, then the local DEA office is notified, so that representatives from the local office can address these violations with the registrant.

On December 22, 1999, the DEA sent a notice to Mediplas, informing Mediplas that it was required to provide 15-day advanced notice prior to the importation of ephedrine, regardless of quantity, and pseudophedrine, for all imports exceeding one kilogram.

The record contains fourteen Form 486s filed by Mediplas between January and June of 2000. Six of these forms were filed in compliance with the 15-day rule. Eight were not filed in compliance with the rule. Judge Randall found Mr. Ahmed credibly testified that he had retained a customs house broker, whom he had authorized to file the Form 486s with DEA. The broker both faxed and mailed the forms to the DEA. Mr. Ahmed credibly testified that he first learned that the DEA had not timely received the faxed Form 486s from Mediplas's customs broker at this suspension hearing. For the shipment of 518.5 kilograms of ephedrine, the Form 486 was received by the DEA on June 5, 2000, noting that the shipment was due to arrive in the U.S. on June 16, 2000. For the shipment of 798.55 kilograms of pseudophedrine, the Form 486 was received by the DEA on June 5, 2000, noting that the shipment was due to arrive in the U.S. on June 16, 2000. For the shipment of 798.55 kilograms of pseudophedrine, the Form 486 was received by the DEA on June 5, 2000, noting that the shipment was due to arrive in the U.S. on June 16, 2000. Thus, the forms were not timely filed, because both forms were received by the DEA 11 days in advance of the projected import date, rather than the required 15 days.

The record contains no evidence that the DEA, prior to the OTSS, had rejected or returned to Mediplas for errors, any of Mediplas's Form 486s, or had notified Mediplas of any untimely filings.

Wholesale Outlet is located in Beaumont, Texas. At the time of the hearing, Wholesale Outlet held DEA Certificate of Registration, 001664WEY, valid until May 31, 2001, as a distributor of the List I chemicals pseudoephedrine, ephedrine, and phenylpropanolamine. Mr. Ahmed decided to distribute Mediplas ephedrine products to a single distributor, Wholesale Outlet. In October of 1999, Mediplas and Wholesale Outlet entered into a ''Distribution Contract,'' (Contract) giving Wholesale Outlet the exclusive rights to buy and sell Mediplas product brands. As of the date of the OTSS, the Contract was still in effect between Mediplas and Wholesale Outlet. In November of 1999, Mediplas and Wholesale Outlet agreed that Mediplas would also see Wholesale Outlet pseudoephedrine products. Originally, the order was 500 cases of pseudoephedrine products a month.

In October of 1999, Mediplas sold Wholesale Outlet 432 bottles of ephedrine 12.5 mg, totaling 25,290 tablets at a total price of $527.04. In November of 1999, Mediplas sold Wholesale Outlet 72,000 bottles of ephedrine 12.5 mg, totaling 4,320,000 tablets at a total price of $90,000. In December of 1999, Mediplas sold Wholesale Outlet 5,760 bottles of ephedrine 12.5 mg, totaling 345,600 tablets at a price of $7,200, and 36,000 bottles of ephedrine 25 mg, totaling 2,160,000 tablets at a price of $45,000. In January of 2000, Mediplas sold Wholesale Outlet 21,600 bottles of ephedrine 12.5 mg, totaling 1,296,000 tablets at a price of $27,000, and 7,200 bottles of ephedrine 25 mg, totaling 432,000 tablets at a price of $9,000. In February of 2000, Mediplas sold Wholesale Outlet 43,200 bottles of ephedrine 12.5 mg, totaling 2,592,000 tablets at a price of $54,000, and 72,022 bottles of pseudophedrine 60 mg, totaling 8,642,640 tablets at a price of $185,040. Finally, in March of 2000, Mediplas sold Wholesale Outlet 36,000 bottles of ephedrine 12.5 mg, totaling 2,160,000 tablets at a price of $45,000, and 63,072 bottles of pseudophedrine 60 mg, totaling 7,568,640 tablets at a price of $162,095.04. Judge Randall found no evidence that the lot numbers represented by these sales, or that any

of this product from these batch numbers, had been seized at illicit laboratories or dump sites.

In a review of Mediplas's sales figures for a three-week period from February 7, 2000, to March 1, 2000, a DEA DI with experience in listed chemical investigations testified that the found such total sales ''suspicious,'' and the highest totals he had ever seen for a three-week period. Specifically, the DI noted that Mediplas had sold 16,211,280 pseudoephedrine tablets between February 7, 2000, and March 1, 2000. He noted that, for the entire year of 1997, Warner Lambert, a national distributor of such products, sold 38,287,089 tablets of product containing pseudoephedrine. The DI noted that Mediplas's sales in an approximately three-week time period in the year 2000, represented 42 percent of the amount of pseudoephedrine product Warner Lambert distributed for the entire calendar year of 1997.

The DI also testified that he found Mediplas's packaging of pseudoephedrine 60 mg single-entity product suspicious, because he had never seen a 120-count bottle in any retail business establishment. Mr. Ahmed agreed that he had not seen such bottles of 120-count pseudophedrine tablets in a store. The Deputy Administrator concurs with Judge Randall's finding that the record contains no evidence that any DEA personnel communicated these specific packaging concerns to any representatives of Mediplas prior to this hearing, however.

In May of 2000, DEA asked Mr. Ahmed to provide a customer list for Wholesale Outlet. Mr. Ahmed complied with the DEA's request. The list consists of fifteen pages. Specifically, for the ephedrine product, ''Mintwin,'' Wholesale Outlet lists 119 customers from Texas, Louisiana, Michigan, Minnesota, and California. For the ephedrine product, ''Twincare,'' Wholesale Outlet lists 8 customers, all in Texas. For the ephedrine product, ''Minitwin,'' Wholesale Outlet lists 20 customers from Louisiana, Georgia, Michigan, Colorado, Texas, Florida, and Washington.

For the pseudoephedrine product, ''Twin-Pseudo,'' Wholesale Outlet lists 53 customers from Utah, Washington, Arkansas, Missouri, Nevada, Oregon, Michigan, Colorado, Texas, Arizona, Montana, Ohio, Oklahoma, and Florida. Wholesale Outlet's customer list is a mixture of wholesale and retail establishments, including convenience stores, gasoline stations, supermarkets, and wholesale grocers and distributors.

On August 3, 2000, the DEA obtained a criminal search warrant for Wholesale Outlet. During the execution of this warrant, DEA representatives obtained information for Wholesale Outlet's receiving records indicating that, aside from Mediplas, Wholesale Outlet purchased List I chemicals from at least six additional suppliers. This warrant was the result of an ongoing DEA investigation into Wholesale Outlet's listed chemical handling practices, as testified to by a number of Government witnesses.

The DEA has implemented a Warning Letter program in response to input provided by the chemical industry. The DEA Warning Letter program is designed to notify manufacturers, distributors, and other handlers of List I Chemicals of the diversion of their products to methamphetamine laboratories or dump sites. Each Warning Letter provides approximately the same information: the date and location of the discovery, the name of the product discovered, the quantity of product discovered, and the lot numbers of the product discovered, if available. In addition, each Warning Letter is accompanied by an attachment setting forth applicable statutes and regulations concerning various aspects of handling listed chemicals. At least nine Warning Letters were delivered by representatives from the DEA's San Antonio office to Mr. Ahmed between approximately June through October, 2000, regarding seizures of the company's imported listed chemical products found ''involved in activities related to the illegal manufacturing process of methamphetamine.'' The nine Warning Letters document the diversion of over eleven thousand bottles of Mediplas's List I chemicals products to the illicit manufacture of controlled substances. In addition, four Warning Letters were delivered to Wholesale Outlet, documenting the diversion of additional List I chemical products.

By letters dated June 13, 2000, and July 10, 2000, Mr. Ahmed informed Wholesale Outlet of the products found in clandestine laboratories as listed in the Warning Letters. In each letter, Mr. Ahmed also requested that Wholesale Outlet ''stop sale to the above locations immediately.'' Wholesale Outlet responded at least once, stating that it would stop selling to those locations.

By letters dated November 11, 1999, December 7, 1999, February 15, 2000, March 15, 2000, March 28, 2000, April 28, 2000, and June 5, 2000, Mr. Ahmed informed the DEA of shipments of listed chemicals, both ephedrine and pseudoephedrine, he had received and subsequently sold to Wholesale Outlet, and of the samples he had provided the DEA, as requested. He noted that he had no shortages and no remaining stock of listed chemicals.

Pursuant to 21 U.S.C. 971(c)(1), and delegations of authority thereunder at 28 CFR 0.100(b) and 0.104, the Deputy Administrator ''may order the suspension of any importation * * * of a listed chemical * * * on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance.'' To suspend a shipment pursuant to 21 U.S.C. 971(c)(1), the DEA must provide written notice to the regulated person, and include the legal and factual basis for the suspension order.

According to 21 U.S.C. 971(a) and 21 CFR 1313.12(a), each ''regulated person'' who imports or exports a threshold quantity of a listed chemical must notify the Attorney General ''not later than 15 days before the transaction is to take place.'' A ''regulated person'' is ''any * * * corporation * * * who manufactures, distributes, imports, or exports a listed chemical[.]'' 21 CFR 1300.02(b)(27); *see also* 21 U.S.C. 802(38). A ''chemical importer'' is a ''regulated person'' responsible ''for determining and controlling the bringing in or introduction of the listed chemical into the United States.'' *See* 21 CFR 1300.02(b)(8).

Further, pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1), a regulated person is required to report to the DEA ''[a]ny regulated transaction involving an extraordinary quantity of a listed chemical * * * or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.''

The regulations also provide that ''the Agency shall have the burden of proving that the requirements * * * for such suspension are satisfied.'' 21 CFR 1313.55. The regulations state that the purpose of a hearing regarding suspended shipments is for ''receiving factual evidence regarding the issues involved in the suspension.'' 21 CFR 1313.52. Thus, the Government must prove by a preponderance of the evidence that grounds exist to conclude that ''the chemical may be diverted to the clandestine manufacture of a controlled substance.'' 21 U.S.C. 971(c)(1); *see also* 21 CFR 1313.41(a) (2000); *Suspension of Shipment Cases January 17, 1998 Shipment of 10,000 Kilograms of Potassium Permanganate, December 16, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate and November 17, 1997 Shipment of 20,000 Kilograms of Potassium*

Permanganate [hereinafter *Suspension of Shipment Cases*], 65 FR 51,333, 51,336–337 (2000). The test is whether or not the listed chemicals *may* be diverted, not whether the listed chemicals actually will be diverted.

The applicable statutory provisions and legislative history are silent concerning what constitutes ''grounds'' for the Government to believe a listed chemical may be diverted to clandestine manufacturing. Likewise, the statute and the regulations are also silent as to the factors to be considered to determine if ''grounds'' exist to conclude that the shipment ''may be diverted.''

To date, past Deputy Administrators have decided three cases concerning this issue. *Suspension of Shipment Cases,* 65 FR 51,333 (2000); *Yi Heng Enters. Dev. Co.,* [hereinafter *Yi Heng*] 64 FR 2,234 (1999); *Neil Laboratories, Inc.,* 64 FR 30,063 (1999). In each case, the then-Deputy Administrator concluded that ''ample'' and ''substantial'' evidence existed to suspend the shipments at issue. In so concluding, Judge Randall found past Deputy Administrators evaluated the following six factors in determining whether a shipment may be diverted: (1) The status of the shipper to ensure the requesting party is entitled to the hearing, (2) the regulated person's compliance history as a handler of listed chemicals, to include whether the advance notification regulations had been fulfilled, (3) the regulated person's sales practices, including the legitimacy of the names and addresses of each proposed recipient of the shipment, (4) the quantities of chemical sold by the regulated person to its immediate customers, (5) the legitimacy of the proposed importation through consultation with the regulated person's government to ensure the regulated person was authorized to receive the proposed shipment, and (6) any relevant law enforcement records concerning the regulated person.

The Deputy Administrator concurs with Judge Randall's finding that these were factors considered in the previous suspension order cases. The Deputy Administrator finds, however, that these factors are only illustrative of the types of evidence relevant to justifying a suspension order, and the enumeration of these factors herein does not exhaust the range of evidence or factors that can be used to justify a suspension order pursuant to 21 U.S.C. 971(c)(1). The Deputy Administrator finds that a totality of the circumstances test is appropriate in determining whether a suspension order is justified.

The DEA provided notice for these suspended shipments by way of the Orders to Suspend Shipment. The Orders outlines several grounds for the DEA's belief that the two shipments, one of ephedrine, and one of pseudoephedrine, would be diverted to the clandestine manufacture of controlled substances. Thus, the 21 U.S.C. 971(c)(1) notice requirement has been met.

A second preliminary determination is whether the requesting party is entitled to a hearing, 21 U.S.C. 971(c)(2) and 21 CFR 1313.52. The DEA previously has held that a principal party in interest of a shipment of a listed chemical would be the ''importer'' for purposes of 21 U.S.C. 971. Essentially, ''if the title to the [listed chemical] passed to [the regulated person] before the chemical entered the United States, then the regulated person] is the principal party in interest.'' *Suspension of Shipment Cases,* 65 FR at 51,336; *Yi Heng,* 64 FR at 2,235.

In this proceeding, there was no dispute that as the DEA-registered importer with title to the chemicals, Mediplas was the principal party in interest in the suspended chemicals. Thus, the Deputy Administrator concurs with Judge Randall's conclusion that Mediplas is considered the regulated person for the purposes of 21 U.S.C. 971, and is entitled to this hearing.

As a further preliminary matter, a past Administrator previously has ruled that the purpose of a hearing regarding the suspension of a chemical shipment ''is to determine whether DEA had evidence at the time to support its finding that the chemical may be diverted, thereby warranting the suspension of the shipment.'' *Suspension of Shipment Cases,* 65 FR at 51,337. In addressing the scope of the hearing, however, the then-Administrator found relevant evidence justifying an order to suspend a chemical shipment must be limited to ''the evidence available to DEA at the time of the suspensions and to the evidence presented by [the regulated person] of its business practices prior to the suspensions and its reputation as a law-abiding company.'' *Id.*

Likewise, in the present case, both the Government and Mediplas were limited to evidence acquired or generated prior to the date of the OTSS. At the hearing in this matter, both the Government and counsel for Mediplas sought to introduce into evidence various exhibits that were either discovered or generated subsequent to the date of the OTSS. Judge Randall adhered to the *Suspension of Shipment Cases,* evidentiary ruling, and did not accept into evidence any proposed exhibit discovered or generated subsequent to the date of the OTSS, as being beyond the scope of the hearing. Pursuant to the requests of the parties, however, Judge Randall appended the rejected exhibits to the record for consideration by the Deputy Administrator, should he choose to reconsider the evidentiary ruling. Subsequently, the Government in its Exceptions specifically requested such reconsideration. For the reasons stated below, the Deputy Administrator hereby reconsiders the evidentiary ruling rendered in the *Suspension of Shipment Cases,* and finds instead that relevant evidence is not limited to that discovered or generated prior to the date of issuance of the suspension order.

In finding that the purpose and scope of the 21 U.S.C. 971(c)(2) hearing is to determine whether DEA had evidence at the time of the issuance of the suspension order to support its finding that the chemicals may be diverted, the then-Administrator compared the suspension of shipment hearing provisions with those regarding revocation of DEA registrations pursuant to 21 U.S.C. 824. The then-Administrator found that since there was no provision in 21 U.S.C. 971 for the institution of proceedings to determine disposition of the suspended chemicals, it was reasonable to conclude the focus of the hearing was whether the suspension order was justified. Since the then-Administrator found the focus of the hearing was justification of the suspension order, he limited his review to the evidence available to the DEA at the time of issuance of the suspension order.

The Deputy Administrator disagrees, and concludes as follows. 21 U.S.C. 971(c)(2) states in relevant part that ''[u]pon written request to the [DEA], a regulated person to whom an [suspension] order applies is entitled to an agency hearing on the record[.]'' Such hearings, as set forth at 21 CFR 1313.52, are ''for the purpose of receiving factual evidence regarding the issues involved in the suspension of shipments[.]'' The Deputy Administrator finds the cited language does not serve to limit his review to any given stage in the proceedings. To the contrary, the plain language of 21 CFR 1313.52 permits review of ''factual evidence regarding issues involved in the suspension[.]'' The Deputy Administrator finds the public interest, as well as the interests of both the DEA and regulated persons, are best served by consideration of evidence regarding the most current issues involved in the suspension, not just those frozen at the time of the issuance of the suspension order. The Deputy Administrator thus

finds the purpose of the 21 U.S.C. 971(c)(2) hearing is to address issues involved in the suspension as they stand at the time of the hearing. Therefore, factual evidence in the instant case regarding the issues involved in the suspension should not be limited only to that generated or discovered up to the time of issuance of the OTSS.

Moreover, contrary to the *Suspension of Shipments Cases* ruling at issue, the Deputy Administrator finds 21 U.S.C. 971(c)(1) adequately addresses the disposition of the suspended shipments. In relevant part, that provision states ''[f]rom and after the time when the [DEA] provides written notice of the [suspension] order to the regulated person, the regulated person may not carry out the transaction.'' The Deputy Administrator finds the intent of 21 U.S.C. 971(c) is not to permanently deprive the regulated person of the suspended chemicals. Indeed, the very use of the word ''suspensions'' in that subsection indicates the intent for a temporary detention. This conclusion is strengthened by the lack of any language in 21 U.S.C. 971 concerning the availability of forfeiture proceedings allowing DEA to permanently dispose of the suspended chemicals. Forfeiture of List I chemicals is addressed at 21 U.S.C. 824(f), and can only take place in conjunction with proceedings to suspend or revoke a DEA registration. Forfeiture of other listed chemicals suspended pursuant to 21 U.S.C. 971 is available pursuant to 21 U.S.C. 881(a). The record indicates that as of the time of the hearing, Mediplas's DEA registration was neither suspended nor revoked.

Therefore, if the suspension order is found to be justified, pursuant to the language of 21 U.S.C. 971(c)(1), ''the regulated person may not carry out *the transaction*.'' (Emphasis added). The focus of this language is upon the specific transaction underlying the suspension order. The Deputy Administrator finds this language permits the regulated person to carry out other transactions regarding the suspended chemicals, however, provided the regulated person complies with the requirements of 21 U.S.C. 971(a) by filing a substitute Form 486, providing DEA 15 days notice of a proposed alternative transaction. If the DEA objects to the proposed alternative transaction, then the process can start over, and a new suspension order issued. If the suspension order is found not to be justified at the time of the hearing, however, then the suspended chemicals can immediately be released to the regulated person and the original transaction allowed to take place. The Deputy Administrator therefore finds disposition of the suspended chemical shipments is adequately addressed, and thus that the ultimate purpose and scope of the 21 U.S.C. 971(c)(2) hearing is to determine whether the OTSS is justified at the time of the hearing.

As a result of his reconsideration of the *Suspension of Shipment Cases* evidentiary ruling, the Deputy Administrator has considered the entire record, including the previously rejected but appended exhibits of both parties, in reaching the conclusions set forth herein.

Judge Randall concluded that the Government had failed to carry its burden of proof in this matter, upon findings that the violations set forth by the Government did not support a conclusion that the shipments ''may be diverted,'' and also considering Mediplas's ''extraordinary and voluntary efforts * * * to comply with DEA's regulations and guidance[.]'' The Deputy Administrator disagrees, and finds as follows.

In interpreting 21 U.S.C. 971(c)(1), the Deputy Administrator finds that the plain language of the statute focuses solely upon whether the chemical shipment ''may be diverted[.]'' The culpability of any regulated person to whom a suspension order applies appears to be irrelevant to this determination. The Deputy Administrator notes that the Controlled Substances Act (CSA) distinguishes between regulatory actions involving DEA applicants and registrants that require a finding of culpability, such as the denial of an application for or the revocation of a DEA Certificate of Registration, in contrast to the issuance of a suspension order to a regulated person involving a temporary, limited detention that may be imposed without a finding of fault. *Compare* 21 U.S.C. 823 and 824 *with* 21 U.S.C. 971(c)(1). Only upon a finding of culpability can a DEA registrant permanently be deprived of controlled substances or List I chemicals, or a regulated person permanently be deprived of listed chemicals. 21 U.S.C. 824(f) and 881(a). The Deputy Administrator finds that in using such broadly drawn language, Congress has invited the use of the widest possible range of relevant evidence in determining whether a shipment ''may be diverted[.]''

A broad interpretation of 21 U.S.C. 971(c)(1) is also supported by DEA precedent. The Deputy Administrator notes that, in one of the previously cited DEA suspension of shipment cases, the then-Deputy Administrator significantly relied upon evidence of misconduct in handling listed chemicals by the regulated person's customers in finding the suspension order justified. In *Yi Heng,* it was argued that evidence of the activities of the regulated person's customers was irrelevant to the administrative proceeding regarding suspended shipments of a listed chemical. Specifically, counsel for the regulated person argued in *Yi Heng* that the regulated person engaged in a legitimate business; that there was no evidence that the regulated person had knowledge of the improper conduct of its customers; that the regulated person could not be held responsible for the bad acts of its customers; and that the regulated person had no control over the chemical once it was sold to its customers. The then-Deputy Administrator rejected these arguments, and considered evidence regarding the activities of both the regulated person and its customers. Specifically, the then-Deputy Administrator found that ''[t]he prior conduct of [the regulated person's] customers regarding [the chemicals] is clearly relevant in determining whether the shipments may be diverted.'' 64 FR at 2,235–6.

Such an interpretation is further supported by the policy behind the enactment of the Controlled Substances Act: ''The Congress makes the following findings and declarations * * * (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.'' 21 U.S.C. 801. ''Congress [in enacting the CSA] was particularly concerned with the diversion of drugs from legitimate channels to illegitimate channels. It was aware that registrants, who have the greatest access to controlled substances and therefore the greatest opportunity for diversion, were responsible for a large part of the illegal drug traffic.'' *United States* v. *Moore,* 423 U.S. 122, 135 (1975) (*citations omitted*). This reasoning applies with equal force to the diversion of listed chemicals by DEA registrants and regulated persons. The interpretation of 21 U.S.C. 971(c)(1) set forth herein advances the purposes of the CSA by providing the DEA with the increased ability to thwart the threatened diversion of listed chemical importations and exportations by allowing consideration of the widest-possible range of relevant evidence. Moreover, the culpability of affected parties has been found irrelevant in criminal and civil actions involving the public health, safety, and welfare and carrying far more serious consequences

that the relatively brief and limited detention authorized by 21 U.S.C. 971. *Cf. United States* v. *Dotterweich,* 320 U.S. 277 (1943) (upholding the Constitutionality of strict criminal liability for ''public welfare offenses'' involving drugs); *United States* v. *Balint,* 258 U.S. 250 (1922) (same); *United States* v. *Green Drugs,* 905 F.2d 694, 697–8 (3d Cir. 1990) (applying strict civil liability to CSA recordkeeping violations and affirming assessment of monetary penalty). In determining whether the OTSS in this case were justified, the Deputy Administrator therefore rejects Judge Randall's factor-by-factor analysis for a much simpler test: whether the totality of the circumstances provides grounds to believe that the suspended chemical shipments may be diverted.

In the instant case, the record shows the following: the nine Warning Letters issued to Mediplas provided substantial evidence documenting the diversion of thousands of bottles of its previously imported List I chemical products to ''clandestine manufacture of a controlled substance.'' 21 U.S.C. 971(c)(1). In addition, the Government provided evidence showing that Wholesale Outlet (1) was under DEA investigation related to its handling of listed chemical products; (2) was the subject of an August 3, 2000, DEA criminal search warrant related to the handling of its listed chemical products; and (3) was the subject of a DEA audit, discussed *infra,* documenting numerous and enormous shortages and overages of *inter alia* Mediplas List I chemical products running into the millions of dosage units. The Deputy Administrator finds this evidence provides ample justification for sustaining the OTSS in this case.

While there was no evidence in the record that Wholesale Outlet had a record of criminal convictions, the Deputy Administrator finds that evidence in support of grounds to believe the suspended chemicals may be diverted is not restricted to conclusive legal judgments. The Deputy Administrator concurs with the finding in the *Suspension of Shipment Cases,* where the then-Deputy Administrator concluded that ''[e]vidence of a violation of law is not necessary to demonstrate that the suspensions were lawful.'' *Id.* at 51,337.

In addition to this evidence, the record shows Mediplas violated applicable law and regulations with regard to its late-filed 486 forms and premature importations and distributions of the List I chemical pseudoephedrine, as set forth below.

The responsibilities of a regulated person include the obligation to file an advance notification to the DEA of the import of a listed chemical that meets the threshold amounts triggering the notification requirement. 21 U.S.C. 971(a); 21 CFR 1313.12. Although the record shows Mediplas filed such notifications for every shipment imported, the record contains eight Form 486s that Mediplas did not timely file during 1999 and 2000. The DEA previously has held that ''failure to file [advanced notification] by itself, does not justify the suspension of the shipments.'' *Suspension of Shipment Cases,* 65 FR at 51,336. Thus, failure to notify in itself does not justify the suspension, but it may be a factor to be considered in the analysis of whether there is the potential for diversion. The record demonstrates that Mediplas failed to provide timely notification using the Form 486 procedure in eight instances during the time period of January through June 2000, prior to importing listed chemicals into the United States. The Form 486s for the two suspended shipments at issue were each filed approximately four days late.

Judge Randall found it significant that Mr. Ahmed was unaware of the untimely filing of the forms. He had hired a customs house broker to prepare and submit this paperwork, and the broker had assured Mr. Ahmed that the forms were faxed and mailed to the DEA. Since Mr. Ahmed had not heard from the DEA concerning these untimely filings prior to this suspension hearing, he was not aware of his broker's errors. Judge Randall concluded that this lack of knowledge logically negated any inference that Mediplas was intentionally failing to inform the DEA of the incoming shipments. Judge Randall noted Mediplas did not fail to notify the DEA of the two shipments at issue, but that the notifications were late. Thus, Judge Randall found it significant that Mediplas's obvious intent was compliance rather than deception in response to this legal requirement.

The Government agrees in its Exceptions that in a prior DEA case, the Deputy Administrator found a DEA registrant responsible for the unlawful actions of its employee, even though the registrant claimed it had no knowledge of the unlawful acts, citing *Leonard Merkow, M.D.,* 60 FR 22,075 (1995). The Deputy Administrator agrees with the Government, and finds in the context of this case that Mediplas is liable for the negligent acts of its agent occurring within the scope of the agent's authority where Mediplas as principal had a statutory and regulatory duty to give 15-day advance notice of importation of a listed chemical. 21 U.S.C. 971(a); 21 CFR 1313.12. *See Restatement (Second) of Agency,* Sections 272, 275, and 277 (1958). See also W. Seavey, *Law of Agency,* Section 98 (1964). Since the Deputy Administrator finds Mediplas is liable in this case for its agent's failure to timely file eight 486 forms, the late-filed forms must weigh negatively in assessing Mediplas's compliance with the obligations of a DEA registrant. Pursuant to the *Suspension of Shipments Cases* ruling, however, these late-filed 486 forms do not in themselves justify issuance of the suspension orders in this case.

The record also contains evidence that Mediplas imported pseudoephedrine without a modified Certificate of Registration from the DEA. Specifically, Mediplas was authorized by DEA on April 10, 2000, to import pseudoephedrine. Yet Mediplas's pseudoephedrine product was found at clandestine methamphetamine laboratory sites as early as March 28, 2000. Further, the DEA had a letter from Mediplas dated February 15, 2000, recording the arrival and sale of Mediplas's pseudoephedrine product. Thus, Judge Randall found Mediplas initially imported its paragraph product with the DEA's knowledge that it lacked DEA's authorization, in the form of a modified Certificate of Registration reflecting the addition of pseudoephedrine to the list of controlled chemicals Mediplas was authorized to import. Judge Randall noted the record contains no evidence that the DEA informed Mediplas of (1) its failure timely to obtain the appropriate registration or (2) of the fact that the DEA found Mediplas's pseudoephedrine product at clandestine laboratory sites prior to Mediplas obtaining the requisite registration. The record does contain letters from Mr. Ahmed, voluntarily informing the DEA of his importation and sales of pseudoephedrine product between February and April of 2000. Judge Randall concluded that Mr. Ahmed was not trying to avoid DEA regulatory requirements or in any way to deceive the DEA.

Looking at the totality of these circumstances, Judge Randall concluded that Mediplas's failure to timely modify its registration, balanced by Mediplas's voluntary compliance efforts, did not justify the suspension of these two shipments. The Government in its Exceptions argues *inter alia* that it should not share the responsibility for a registrant's actions taken outside the scope of the registrant's authority.

The Deputy Administrator finds that evidence of voluntary communications received by DEA from a registrant are admissible to show attempted compliance with applicable DEA registrant obligations. Lack of a DEA response to such voluntary communications, however, does not serve to ratify or to otherwise authorize illicit or unauthorized acts by the registrant. DEA regulations clearly state that ''[e]very person who * * * imports * * * any List I chemical * * * shall obtain annually a registration specific to the List I chemicals to be handled[.]'' 21 CFR 1309.21(a). In addition, ''a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.'' 21 CFR 1309.22(b). Finally, ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is approved and a Certificate of Registration is issued by the Administrator to such person.'' 21 CFR 1309.31(a). Mediplas violated these regulations by importing and distributing pseudoephedrine on two occasions without being properly registered to do so.

The Deputy Administrator concurs with Judge Randall's conclusion that Mediplas was not trying to avoid DEA regulatory requirements or to deceive the DEA. Mediplas's efforts to comply with the obligations of a DEA chemical registrant were both extensive and laudable. The Deputy Administrator finds, however, that the record shows the violations set forth above were attributable to a lack of proper care and attention on the part of Mediplas. The Deputy Administrator is therefore forced to conclude that the untimely Form 486 filing violations attributable to Mediplas, together with Mediplas's multiple regulatory violations regarding its premature importations and distributions of pseudoephedrine, ultimately contribute to the finding herein that the suspended shipments at issue may be diverted.

The Deputy Administrator further notes with regard to the instant case that efforts at compliance are ultimately irrelevant to the specific determination of whether a chemical shipment may be diverted. As previously stated, a suspension order may be justified without regard to culpability. Remedial efforts by a regulated person to whom such an order applies, however, could well be relevant to this determination. The Deputy Administrator notes Judge Randall found Mr. Ahmed credibly testified that, in a letter sent to the DEA Headquarters dated July 12, 2002, he had sought guidance from DEA concerning how to respond to the Warning Letters he received. Specifically, Mr. Ahmed provided a number of proposals for the DEA's approval, to include (1) Mediplas would discontinue the sale and import of pseudoephedrine, (2) Mediplas would reduce its imported amount of ephedrine per month, (3) Mediplas would repackage its product into ''pouch packs,'' and (4) Mediplas would discontinue sales to Wholesale Outlet, selling instead to another distributor. In addition, pursuant to his reconsideration of the *Suspension of Shipments* evidentiary ruling, the Deputy Administrator has considered a letter dated August 15, 2000, from Mr. Ahmed to DEA wherein Mr. Ahmed states he is holding the sale of the two shipments, and that he has stopped the importation of his Twin-Pseudo product. The Deputy Administrator finds that, while this evidence shows that Mediplas appears to be willing to take extensive remedial actions in an effort to thwart future diversion, without additional evidence establishing concrete remedial steps taken, this evidence is insufficient to mitigate the conclusion that the suspended shipments at issue may be diverted.

Pursuant to his reconsideration of the evidentiary ruling in the *Suspension of Shipment Cases* above, the Deputy Administrator has also considered a Government exhibit representing he results of the previously-mentioned DEA audit of Wholesale Outlet's List I chemical products that was conducted subsequent to the date of the OTSS. The audit covered the time period from September 22, 1998, to September 22, 2000, and focused on the accountability of List I chemicals supplied to Wholesale Outlet by Mediplas, as well as List I chemicals supplied to Wholesale Outlet by at least six additional suppliers. The audit revealed numerous dosage unit shortages and overages of various List I chemical products supplied to Wholesale Outlet by Mediplas. The audit also revealed numerous shortages and overages of List I chemical products supplied to Wholesale Outlet by the other six suppliers. There were shortages and overages in every List I chemical product audited, including each of Mediplas's List I chemical products supplied to Wholesale Outlet. Wholesale Outlet failed to account for various List I chemical products ranging from the hundreds to almost two million dosage units, depending on the product. The recordkeeping discrepancies for Mediplas products alone reached almost to eleven million dosage units of List I chemical products.

List I chemical recordkeeping discrepancies constitute violations of 21 U.S.C. 830(a) and 842(a)(10) and 21 CFR 1310.03 and 1310.06. The Deputy Administrator finds that the results of this audit constitute substantial evidence showing Wholesale Outlet's significant failures to comply with applicable recordkeeping requirements, creating a grave risk of diversion. *See Alexander Drug Company, Inc.* 66 FR 18,299, 18,303 (2001). Therefore, the Deputy Administrator finds that the results of this audit weigh heavily in favor of a determination that the suspended chemicals may be diverted.

As further justification in issuing the OTSS in this case, the Government provided data concerning Mediplas's sales figures and the sales figures of a major distributor of pseudoephedrine products, Warner Lambert. The record shows that Mediplas distributed to Wholesale Outlet 135,094 bottles, or 16,211,280 dosage units, of List I chemical products between February 7 and March 1, 2000; while Warner Lambert distributed 38,287,089 dosage units of List I chemical products for the entire year of 1997. Judge Randall construed the Government's argument to suggest that, because Mediplas's sales figures seemed so disproportionately high compared to Warner Lambert's figures, that the sales were ''suspicious'' or otherwise led to a conclusion that Mediplas product were more likely to be diverted than Warner Lambert's product. Judge Randall concluded that this logic is not supported by the record because the Government provided no data of diverted product from Warner Lambert and therefore the basis for a complete comparison does not exist.

In its Exceptions, the Government states that the purpose of this evidence is not to make a relative comparison of the likelihood of diversion of Mediplas versus Warner Lambert products. Rather, the Government seems to argue that this evidence is relevant to the ''may be diverted'' standard because of the large amount of chemicals sold by a relatively small company over a short period of time could saturate the market and create an environment conducive to diversion.

The Deputy Administrator concurs with Judge Randall's finding that the statute and regulations provide quantity amounts of List I chemicals to define a ''regulated transaction.'' *See* 21 U.S.C. 802(39)(a); 21 CFR 1300.02(28) and 1310.04. If a ''regulated person'' engages in a ''regulated transaction,'' then such

a transaction triggers recordkeeping and reporting requirements. *See* 21 CFR 1310.04 and 1310.05. Neither the statute nor the regulations provide limitations on the amount of List I chemicals a registered importer may sell to a registered distributor in the normal course of business.

The Deputy Administrator disagrees with the Government, and concurs with Judge Randall's determination that there is insufficient evidence in the record to find that the quantity of List I chemical products distributed by Mediplas over the above-referenced time period was an ''extraordinary quantity.'' The Deputy Administrator also concurs with judge Randall's finding that the record contains no evidence that the quantities of List I chemicals sold to Wholesale Outlet by Mediplas violated any published regulations or other materials distributed by DEA to its business registrants. The Deputy Administrator notes the Government does not argue that Mediplas had any specific recordkeeping or reporting discrepancies, even though Government witnesses asserted that Mediplas engaged in ''excessive quantity'' sales.

The Deputy Administrator notes that nowhere in the law, regulations, or in DEA guidelines is ''extraordinary quantity'' defined or discussed. The Deputy Administrator further notes that, while Mediplas may be a small company distributing to a single customer, that customer, Wholesale Outlet, had in turn approximately 200 of its own customers across the United States. The record shows that a number of these customers were distributors and wholesalers in their own right. The record further shows that Mr. Ahmed was aware of Wholesale Outlet's extensive distribution network, and this was a significant reason why he chose to do exclusive business with Wholesale Outlet. As to the Government's ''market saturation'' argument, the Government presented no evidence purporting to show that Wholesale Outlet's distribution network was inadequate to legitimately absorb the quantity of List I chemical products received from Mediplas.

Likewise, the record contains no evidence that Mediplas sold unauthorized quantities of List I chemicals to Wholesale Outlet. Although several Government witnesses testified that Mediplas engaged in sales of excessive quantities, the Deputy Administrator concurs with Judge Randall's finding that the bases of their conclusions are speculative. The Government has provided insufficient evidence to support its conclusion that such sales of listed chemicals in such a business setting would equate to ''excessive quantities.'' Therefore, the Deputy Administrator concurs with Judge Randall's finding that the Government's ''excessive quantities'' arguments are not persuasive under the circumstances of this case. Accordingly, the Deputy Administrator further agrees with Judge Randall's conclusion that the quantities Mediplas sold in the normal course of business do not serve as grounds to believe that the two shipments at issue ''may be diverted.''

As additional justification for the OTSS, several Government witnesses testified concerning the ''traditional'' market and the ''non-traditional'' market for products containing ephedrine and pseudoephedrine. This testimony, supported only by anecdotal evidence, is as follows. The ''traditional'' market includes outlets where a consumer of such legitimate over-the-counter products containing ephedrine or pseudoephedrine would be expected to purchase them. Such outlets would include pharmacies, or pharmacy sections of grocery stores, or discount stores such as Wal Mart. In contrast, the ''non-traditional market'' includes outlets where a consumer of such legitimate over-the-counter products containing ephedrine or pseudoephedrine would be less likely to purchase them. Such market outlets would include convenience stores, liquor stores, and gas stations. The ''traditional'' market and the ''non-traditional'' market also differ in the packaging of over-the-counter ephedrine and pseudoephedrine products. Outlets in the ''traditional'' market typically sell such over-the-counter products packaged in blister packs, in 24-count or 48-count packages sizes. The ''non-traditional'' market outlets, on the other hand, tend to sell over-the-counter products containing ephedrine and pseudoephedrine in bottles, typically of 60-count or 120-count size. Several Government witnesses testified that ephedrine and pseudoephedrine products found at larger illicit methamphetamine laboratories are usually packaged in the 60-count and 120-count bottles. The DEA therefore concludes that the source of these bottles is the ''non-traditional'' market outlets. The DEA has also found such packaged pseudoephedrine products at methamphetamine laboratory dump sites.

The Deputy Administrator notes, however, that a Government witness also testified that List I chemical products distributed through the traditional market, such as through Wal-Mart, have also be diverted. Upon cross examination, a Government witness admitted that the ''traditional'' versus ''non-traditional'' outlet distinction was an informal, internal DEA use only. As of the date of the hearing, the DEA had not recorded such distinctions in any of its regulations. The Deputy Administrator finds the probative weight of this evidence is minimal without some form of further extrinsic evidence to support these arguments.

Upon reviewing the totality of the circumstances of this case, the Deputy Administrator finds the OTSS justified. In reaching this conclusion, the Deputy Administrator has carefully considered Mediplas's exemplary efforts to comply with its obligations as a DEA chemical registrant, as well as its extensive record of cooperation with the DEA. The Government provided ample evidence to show these shipments may be diverted, however. The record shows that at the time of the hearing, Mediplas's immediate and sole customer, Wholesale Outlet, was under investigation by DEA regarding suspected misconduct in its handling of List I chemicals, and was also the subject of a DEA criminal search warrant, based upon probable cause to believe it was engaged in misconduct in handling List I chemicals. A DEA audit of Wholesale Outlet found numerous and enormous shortages and overages of *inter alia* Mediplas's List I chemical products. In addition, the nine Warning Letters issued to Mediplas documented thousands of bottles of Mediplas's List I chemical products being diverted to the clandestine manufacture of controlled substances.

The record shows, moreover, that Mediplas significantly violated applicable law and regulations by, first, failing to timely file eight Form 486 advanced notifications of importations; and second, by importing and distributing the List I chemical pseudoephedrine on two occasions, without obtaining proper registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b), hereby orders that the suspensions of the subject shipments be, and hereby are, sustained.

This final order is effective immediately.

Dated: May 30, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–15193 Filed 6–14–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Correction to Solicitation for a Cooperative Agreement—(Training Program Revision: National Sheriffs' Institute)

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Correction to Solicitation for a Corrective Agreement.

SUMMARY: Correction of Closing Date from June 24, 2002 to June 25, 2002.

The original announcement was printed in the **Federal Register** on May 7, 2002 (Volume 67, Number 88) under Notices. The title of the announcement is Training Program Revision: National Sheriffs' Institute—NIC Application Number 02J20.

The closing date was incorrectly stated on page 30727 as 4 p.m. on Tuesday, June 24, 2002. The correct date is 4 p.m. on Tuesday, June 25, 2002.

Dated: June 11, 2002.

Larry Solomon,

Deputy Director.

[FR Doc. 02–15176 Filed 6–14–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

Office for Victims of Crime

[OJP(OVC)–1355]

Notice of Solicitation for Victim Services

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Notice is hereby given that the Office for Victims of Crime is requesting applications for the Victim Services solicitation, which has two components. The first component is for awards that will support the creation and/or enhancement of collaborative networks that will provide comprehensive services for persons identified as trafficking victims in federal investigations or prosecutions within the United States. The second component of the Victim Services solicitation is for awards to be made to eligible entities to provide discrete (single service, such as housing, legal, or medical), episodic, and rapid-response victim services nationwide wherever and whenever trafficking victims are identified in the course of a federal investigation or prosecution.

DATES: Applications for competitive programs must be received (not postmarked) at the OVC Training and Technical Assistance Center located at the address below on Monday, June 29, 2002, no later than 5:30 eastern standard time. OVC will not grant extensions of the due date.

ADDRESSES: All applications should be addressed to Office for Victims of Crime, c/o OVC Training and Technical Assistance Center, 10530 Rosehaven Street, Suite 400, Fairfax, Virginia 22030 (telephone 703–385–3200). Applicants must clearly write the name of the program begin applied for in the lower left corner of the envelope. OVC does not accept faxed submissions. Please be advised that if an application does not reach the OVC Training and Technical Assistance Center (TTAC) by the due date, it will not be considered for funding regardless of the postmark date.

FOR FURTHER INFORMATION CONTACT: Michelle Avery Weston, Program Specialist (telephone 202–514–5084 or e-mail *averym@ojp.usdoj.gov*). Interested applicants should obtain the OVC FY 2002 Services for Trafficking Victims Discretionary Grant Application Kit. This application kit provides the necessary information and guidance for preparing and submitting an application for an OVC Services for Trafficking Victims Discretionary grant program award. Section I of the application kit contains solicitation for the two competitive programs. Section II presents general application requirements and includes the required application forms. To request applicant kits, please call the OVC Resource Center at 1–800–627–6872 or call the OVC Reply Line at 202–616–1926. In addition, the application kit can be downloaded from the OVC World Wide Web home page at *www.ojp.usdoj.gov/ovc*.

SUPPLEMENTARY INFORMATION: Type of Award: Two types of cooperative agreements for victim services will be awarded under this program:

A. Comprehensive Services

These awards will support the creation and/or enhancement of collaborative networks that will provide comprehensive services for persons identified as trafficking victims [1] in federal investigations or prosecutions within the United States. Applicants must demonstrate the capacity to quickly mobilize resources to accommodate the needs of identified victims and to provide services to them. In addition to providing direct victim services, Comprehensive Services sites also will collaborate with a national training and technical assistance provider and evaluator to document activities, collect and share data, and produce protocols and other materials to facilitate replication, mentoring, and technical assistance provision in other localities. (For a more complete description of these awards, please see the Program Strategy section below.)

B. Supplemental/Specialized Services

These awards will be made to eligible entities to provide discrete (single service, such as housing, legal, or medical), episodic, and rapid-response victim services nationwide wherever and whenever trafficking victims are identified in the course of a federal investigation or prosecution. Applicants must specify the maximum number of victims that can be provided services at any given time. Applicants must demonstrate the ability to quickly mobilize resources to accommodate the needs of identified victims and to coordinate with other trafficking program grantees (Comprehensive Services funding recipients, national training and technical assistance provider, and evaluator) and other service providers to the extent possible. (For a more complete description of these awards, please see the Program Strategy section below.)

For both types of awards contemplated by this grant program, services for trafficking victims should address victims' needs during the ''precertification'' period. (This is the period of time between when trafficking victims are initially identified by law enforcement and officially certified by the Federal Government as such.) Once trafficking victims have received certification, they become eligible to apply for a number of benefits and services provided through federally funded programs. Prior to certification, victims' needs are acute and largely unmet. Therefore, funding under this program is intended primarily to meet victims' precertification needs. Applicants for funding should indicate how they propose to meet such needs and the maximum number of victims that the applicant can serve.

[1] As defined by statute, victims of trafficking are persons who have been subjected to: (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102 (8); (9); (14).

Number and Amount of Awards: No set number of awards has been established for this program. Award amounts will vary depending on the types of services to be provided and the number of victims anticipated to be served. For further information, please see the ''Budget'' subheading under the ''Selection Criteria'' section below.

Interested parties may apply for both types of awards. For example, an applicant for a Comprehensive Services award to provide trafficking victim services within a defined geographic area also may apply for a Supplemental/Specialized Services award to provide additional victim services beyond those services contemplated under the applicant's Comprehensive Services proposal. Applications will be reviewed carefully to assess the applicant's capability to provide both types of services and avoid duplication of efforts. Small organizations are specifically invited to apply for funding under this grant program to provide services to trafficking victims. Applicants must indicate in their applications the type of award for which they are applying: Comprehensive Services or Supplemental/Specialized Services, or both. If applications are submitted for both, the applicant must describe how funded activities will complement and not duplicate one another.

Award Period: 12–36 months, in increments of 12 months. Applicants must indicate whether they are applying for 12, 24, or 36 months of funding.

Goal: The goal of the Services for Trafficking Victims Discretionary Grant Program is to develop, expand, or strengthen victim service programs for victims of trafficking.

Purpose(s): The purpose of this grant program is to provide comprehensive services for victims of trafficking by building on existing community resources to meet the unique needs of victims, particularly during the precertification period when victims' needs are especially urgent. Specifically, this project aims to:

- Develop, expand, or strengthen victim service programs for victims of trafficking.
- Strengthen the collaboration and cooperation between existing agencies and organizations that serve or have the capacity to serve trafficking victims to build an effective, comprehensive system or network of services to respond to the needs of victims of severe forms of trafficking in the federal criminal justice system.
- Support the development of services and programs currently unavailable to assist trafficking victims as additional components of an integrated system.
- Provide training to increase the awareness among criminal justice entities, social services providers, and the public of the rights and needs of trafficking victims.
- Support the ability of trafficking victims to cooperate with law enforcement and prosecutors in trafficking cases.

Background/Problem Statement: Trafficking in persons includes the recruitment, transportation, or sale of persons (males and females, adults and children) for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Many trafficking victims are forced to work in the sex trade; however, other trafficking situations exist, including domestic servitude, labor in a prison-like factory, or migrant agricultural work.

Trafficking in persons is a significant, yet still largely undetected crime. Although there are no hard data on the number of cases nationally, the Federal Government estimates that 50,000 women and children are trafficked into the United States each year. Estimates by nongovernmental organizations (NGOs) working on trafficking issues are much higher, at more than 2 million victims each year. Victims often come from economically disadvantaged circumstances, have little or no formal academic or skills training, and therefore have limited opportunity for economic independence. In some cases, victims have received a formal education but due to limited economic opportunities in their home country they have fallen prey to traffickers' false promises of legitimate, well-paying jobs in the United States. Regardless of their background, victims typically feel great shame and responsibility for their victimization.

Trafficking victims' service needs are complex and acute. While victims share some of the same needs as other types of victims, such as victims of domestic violence, trafficking victims also require additional services. For example, victims trafficked into the United States from other countries typically experience language and communication barriers and lack information about their legal rights under federal and state laws, the legal process, or availability of crime victim assistance.

According to many experts, one of the critical needs of trafficking victims is appropriate and adequate shelter. Victims also may need mental health treatment, both crisis counseling and longer-term support, as well as emergency and ongoing medical attention. Other victims' needs include social services advocacy to help victims understand and access available benefits. All services provided to victims should be provided in a culturally sensitive manner, taking into account victims' linguistic, cultural, and religious identity.

Unfortunately, trafficking victims face many barriers that prevent them from accessing necessary services. Due to the nature of the crime, in which trafficking victims often are held hostage and isolated from others, they are prevented from learning about their legal rights or the services available to them. They often have a great fear of deportation by the Immigration and Naturalization Service (INS) and/or detention by local law enforcement agencies, a fear that is manipulated and exploited by traffickers to keep victims isolated and under their control.

Given the diversity of trafficking victims' origins and the forms of their victimization, multiple service needs, barriers to accessing services, and the fact that trafficking cases with numerous victims may surface anywhere in the country, the challenges faced by service providers are clear. Existing service providers have been called on to develop and deliver expanded services on an ad hoc basis, often at a moment's notice and without receiving additional resources to support these expanded services. Many service providers throughout the United States remain unaware of the crime, the needs of victims, the existing services for trafficking victims in their area, if any, and the need to coordinate among government and nongovernment entities at all levels (local, state, regional, tribal, and federal).

In recognition of the critical circumstances faced by trafficking victims, Congress enacted the Trafficking Victims Protection Act of 2000 (Pub. L. 106–386), 22 U.S.C. 7101 et. seq., to respond and combat trafficking in persons. In addition to establishing new tools and resources to prevent and prosecute trafficking in persons, this legislation also authorizes a new array of services and protections for victims. Congress appropriated $10 million in funding to the Department of Justice to support the development or enhancement of victim services programs for trafficking victims.

Program Strategy: An ideal response to the acute and complex needs of trafficking victims should be based on a comprehensive approach that incorporates all necessary victim support services (provided in-house, via

collaboration with community-based resources, or via supplemental assistance from a specialized service provider) to address the needs of persons identified as trafficking victims in federal criminal investigations and prosecutions. This initiative aims to develop, expand, or strengthen victim service programs for victims of trafficking in two distinct yet complementary ways, which are described below.

For both types of awards, applicants must identify the need they seek to address with project funding, such as the presence of identified or suspected trafficking victims and the lack of services to meet their needs. Applicants for Comprehensive Services also must demonstrate the capacity to perform the intensive case management and record keeping needed to adequately serve trafficking victims. Applicants for Supplemental/Specialized Services also must demonstrate the willingness and capacity to collaborate with the service delivery and case management efforts of other victim service providers.

A. Comprehensive Services

Awards for Comprehensive Services are intended to build collaborative and/or community-based networks of comprehensive, integrated, and culturally appropriate services for trafficking victims within a defined geographical area, such as a city, state, or region of the United States.[2] Projects funded to provide comprehensive services will have several components/phases:

- Coordination and collaboration with other agencies.
- Assessment of existing services, resources, and needs.
- Coalition building and outreach (identify key partners and roles).
- Development and implementation of a comprehensive victim services model.
- Development of a plan to sustain the project after OVC funding ends.
- Collection of data for program information dissemination and program evaluation purposes.

Coordination and Collaboration With Other Agencies

An ideal trafficking victim response should provide a comprehensive approach to address the acute needs of trafficked persons by either directly providing services or coordinating access to services that provide shelter and sustenance, general health and mental health care, legal services, job skills training, and cultural support from the community and educational services. Given the unique circumstances of trafficking victims, the proposed community response should incorporate both governmental and nongovernmental (community-based) social service entities in an advisory and/or service provision capacity. Applications should describe how applicants will coordinate with law enforcement agencies in providing services to victims of trafficking.

Key partners/actors should include (but are not limited to):

Federal, state, and local law enforcement, investigative, and prosecutorial agencies
City and/or county governments
State or local government social services agencies
Community-based service providers
  Shelter providers
  Mental health care providers
  Medical care providers
  Immigrant advocacy providers
  Legal services providers
Faith-based organizations
Local civic and business community

Other collaborative partners may include (but are not limited to):

State VOCA Victim Compensation and Assistance Administrators
Professional affiliation associations
Institutions of professional education

Assessment of Existing Services, Resources, and Needs

Services needed by trafficking victims include (but are not limited to):

- Shelter/housing and sustenance (emergency and long term).
- Medical and mental health care (emergency and long term).
- Special services for child/juvenile victims.
- Interpreter/translator services.
- Criminal justice system-based victim advocacy.
- Legal services.
- Social services advocacy (explanation of benefit entitlements/availability).
- Explanation of legal rights and protections.
- Literacy education and/or job training.
- Outreach services directed toward immigrant populations.
- Transportation.

For application purposes, applicants should identify and provide a description of existing victim services or other community resources to serve trafficking victims. Applicants also should provide data regarding the number and types of trafficking victims already served (if any). In addition, applications for funding should describe the assessment plan or process applicants will use to further identify and assess community resources, services, and needs for trafficking victims. If applicants already have conducted such needs assessments, their applications should describe how the assessment was conducted, provide a summary of the assessment findings, and describe how applicants propose to develop or enhance victim services based on existing community resources (rather than creating a new set of narrowly tailored services). Specifically, applicants should identify existing resources and describe how they propose to adapt or expand those resources to meet the full range of victim needs throughout the various stages of recovery that victims experience.

In addition to the specific needs listed above, trafficking victims often also have important safety, security, privacy, and confidentiality concerns; therefore applicants' assessments of existing resources and needs should discuss available resources to promote victims' safety, security, privacy, and confidentiality. Applicants' assessments also should discuss the cultural competency of available resources and services, if known, or describe how such competency will be assessed, if not known. Other resources for developing cultural competency, such as available training options, also should be described.

Coalition Building and Outreach

Applications for funding should identify key community partners and their respective roles and responsibilities in providing services to trafficking victims. Additionally, applicants should indicate how they propose to perform outreach/coordination to educate government agencies and NGOs about trafficking to increase/enhance identification of victims.

Applicants should describe how they will perform community outreach through both formal and informal collaborative mechanisms among service providers and the local/state/federal criminal justice systems. Applicants should have the capacity to network and reach out to federal, state, and local justice systems. Effective working relationships with law enforcement at all levels will improve the law enforcement response, such as law enforcement's expertise in

[2] The phrase United States refers to the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States. 22 U.S.C. 7102(12).

appropriately identifying and serving trafficking victims, and also facilitate the participation of trafficked persons as witnesses in the investigation and prosecution of traffickers. Applicants should describe previous experience in providing or coordinating victim responses with federal law enforcement agencies investigating or prosecuting trafficking or similar cases, or in situations involving mass trauma or torture.

Victims who are returned home to other countries often are socially ostracized, particularly in the cases of sexual exploitation and victimization, in which victims also have particular health care needs as well. Applications for funding should indicate an applicant's willingness and/or ability to collaborate with international organizations, government agencies, and NGOs to provide appropriate and safe repatriation and reintegration for trafficked persons who are going back home. (Please note that funding under this program is available only to entities in the United States for services to victims in the United States.)

Applications for Comprehensive Services awards must include, as an attachment, a Letter of Intent developed and signed by the directors of all participating agencies that will collaborate to plan, develop, and implement the project. The Letter of Intent must:

- Provide a brief history of the collaborative relationship among the partners, including when and under what circumstances the relationship began and when each partner entered into the relationship. If the collaboration will begin with this project indicate such intent.
- Specify the extent of each party's participation in developing the application.
- Clearly delineate the roles and responsibilities each organization or agency would assume to ensure the success of the proposed project.
- Describe each partner's awareness of or experience in working with federally funded benefits-issuing programs and agencies.
- Identify the representatives of the planning and development team who would be responsible for planning, developing, and implementing project activities and describe how they would work together and with project staff.
- Demonstrate a commitment on the part of all partners to work together to achieve project goals.
- Indicate approval of the proposed project budget by all signing parties.
- Describe the resources each partner would contribute to the project, either through time, in-kind contributions, or grant funds (for example, office space, project staff, training).

Development and Implementation of Comprehensive Victim Services Model

The crime of trafficking requires more than just a law enforcement or victim service response, but a collaborative and integrative effort to address special needs and circumstances. Victim service programs for trafficking victims should help alleviate the practical and cultural barriers that keep victims from turning to law enforcement for help. In addition, service providers must have the capacity to perform case management and protocol development to coordinate the multiple services needed by trafficking victims.

In all applications for funding, applicants must provide a strategy for providing and/or obtaining appropriate services, such as housing, legal, mental health, and medical services for victims. Applications should describe the specific steps that applicants will take to serve trafficking victims, including procedures for initial intake and assessment of victims' needs, development of an individualized service plan, provision and coordination of services, periodic assessment of whether victims' needs are being met, documentation of referrals and services delivered, and modification of services as appropriate throughout victims' recovery. For example, providers should describe their capacity to conduct necessary and appropriate intake assessments, such as health, mental health, and safety evaluations, primarily to identify victim needs, but also to minimize health and safety risks to other victims being served. For all tasks described above, applications also should describe the staff resources (i.e., number of staff and their roles and responsibilities) to be dedicated to accomplishing the tasks.

Development of Plan To Sustain the Project After OVC Funding Ends

All applicants should provide information on the potential for generating community and individual support for the project to sustain the project once federal funding ends, and the steps they will take to explore resources and develop a plan to sustain services to trafficking victims if awarded funding. As significant lead time often is necessary to build community support and garner financial resources, funding recipients should begin soon after receiving an award to develop a detailed plan for maintaining services to trafficking victims in the absence of federal funding.

Collection of Data for Program Information Dissemination and Program Evaluation Purposes

Evaluation is necessary to ensure that Comprehensive Services projects meet their goals in terms of the process and impact on trafficking victims. Documentation of projects also will facilitate replication/adaptation of best practices in other locations. All Comprehensive Services projects must collect data on their operation and effectiveness in assisting trafficking victims.

The objectives of the evaluation are:

- To document project interventions, implementation processes, and key factors affecting successful implementation, including levels of collaboration and sustainability.
- To document the impact of service interventions by capturing and reporting data on victims from initial intake through exit interviews.

Comprehensive Services award recipients will have two major evaluation responsibilities. First, grantees must collect process evaluation data and generate process evaluation reports following guidelines to be developed by the independent evaluator for this Trafficking Program. Second, award recipients will establish an information management system to generate, collect, store, and report outcome data designated by the independent evaluator.

To address their capability to successfully perform these tasks, Comprehensive Services applicants should provide detailed information in their applications regarding their proposed methodology for monitoring program activities. Applicants also must state that they have or will create an electronic infrastructure capable of fully supporting data collection for the project and that they will have sufficient qualified staff to carry out these responsibilities.

In addition to the evaluation plan required of all applicants for collecting data about the project and its progress, a small number of sites will be identified for further evaluation. An important purpose of this demonstration program is to gain a better understanding of how best to serve the needs of trafficking victims. As a result, one or two Comprehensive Services sites will be selected to work with an independent evaluator to study the activities funded under this solicitation. Comprehensive Services sites chosen to participate in the evaluation will have the unique opportunity to receive indepth feedback on their program as well as participate in the

groundbreaking work of identifying elements of an effective integrated service delivery system for trafficking victims. Criteria for selecting the Comprehensive Services sites to be evaluated will be developed by the evaluator in conjunction with OVC, but an appreciation by project staff of the significance of this evaluation will be an important factor. Accordingly, applicants who would be interested in being selected as one of these sites should indicate their interest and willingness to work with the national evaluator in their applications. Any additional costs associated with the independent evaluation will be borne primarily by the national evaluator, although some incidental costs may be covered by the evaluation set-aside required of all applicants for funding. (This set-aside is described in the budget section below.)

Comprehensive Services sites selected for independent evaluation will be required to assist the independent evaluator in collecting data and maintaining records including victims' demographic information, number and types of referrals to services, and documentation of services delivered. The evaluation of Comprehensive Services sites also may include surveys and interviews of victims, service providers, and government and community stakeholders. (To ensure victim confidentiality and victim/witness security, evaluation interviews will not be conducted in open investigations or prosecutions.) Qualitative and quantitative data will be collected. The evaluation will seek to identify the range of services required for a comprehensive collaborative approach, document the impact of these services, identify how these services can most effectively be delivered and use this information to facilitate replication of comprehensive service models in other communities.

The evaluation may consider some of the following basic questions:

- What are the obstacles faced by the community in providing services for trafficking victims?
- What needs and resources were identified through the community assessment?
- Is there a viable network of services to adequately and appropriately respond to the needs of trafficking victims?
- Has there been an increase in the number of trafficking victims being identified and served? If so, what is the increase?
- What additional or enhanced services have been provided?
- Have previously unserved victims received services?
- What approaches were successful in overcoming obstacles to establish or enhance services for trafficking victims?
- How were these approaches developed and implemented?
- How do grantees plan to sustain their victim service programs after OVC funding ends?

B. Supplemental/Specialized Services

OVC anticipates that many communities nationwide will need assistance in providing appropriate and adequate services for trafficking victims in the United States, often on a rapid-response and episodic basis. This is especially true in areas where trafficking victims are identified for the first time and where very limited services may be available, and in cases where there are multiple (i.e., large numbers of) victims with needs that exceed services available in a given community. The purpose of Supplemental/Specialized Services awards are to support victim services in such communities by providers that have the capacity to marshal resources on an as-needed basis anywhere throughout the United States or a large geographic region of the United States (such as the Northeast, Southeast, Midwest, Northwest, or Southwest). Examples of specialized and/or supplemental services for trafficking victims include, but are not limited to, shelter/housing, legal services, and mental health/counseling services.

Shelter/Housing

Shelter/housing for trafficking victims presents a unique set of challenges for service providers primarily because there is a shortage of safe, appropriate, and adequate temporary housing for victims. Men, women, and children who are trafficking victims have a critical need for immediate, short- and/or long-term shelter. In particular, appropriate and safe housing is needed in place of custodial detention by Federal or state criminal justice systems. Existing shelter options, such as domestic violence or homeless shelters, often have scarce resources to meet the needs of the discrete populations they are intended to serve. In addition, many existing shelters are able to house individuals only for brief periods of time, are not equipped with special resources trafficking victims need, such as multilingual staff and heightened security, or have other restrictions that might preclude trafficking victims.

Thus, supplemental/specialized services awards may be used to address trafficking victims' shelter/housing needs. Providers of appropriate and adequate shelter/housing for trafficking victims should have the capacity to accommodate emergency and longer-term residents; single or large numbers of victims; male, female, and juvenile victims, and victims' family members (parents, spouses, and children); victims from diverse cultural, linguistic, and religious backgrounds; and victims of various forms of trafficking (such as sex trafficking, forced labor, and domestic servitude). Applicants with limited capacity to accommodate only certain types of victims (*e.g.,* women only, individuals without dependents only) should clearly indicate this in their application. OVC is especially interested in receiving proposals from applicants with the capacity to house victims for whom shelter/housing options are particularly scarce, such as minors or victims with dependents.

Due to the intensive case management needs of trafficking victims, shelter/housing providers also should offer in-house victim services and case management or have the capacity and willingness to collaborate with community-based services in the locality where they are providing shelter/housing resources. Shelter providers also should describe their capacity to conduct necessary and appropriate intake assessments, such as health, mental health, and safety evaluations, primarily to identify victim needs, but also to minimize health and safety risks to other shelter residents.

Applicants for Supplemental/Specialized Services awards should describe their capacity to provide housing to victims of trafficking based on existing resources. Applicants also should indicate the geographic area in which they have the capacity to provide shelter/housing services.

Legal Services

Trafficking victims have a critical need for appropriate and adequate legal services.

Victims often lack knowledge/information about their legal rights, the legal process, or the services available to them. In cases where victims have been trafficked into the United States from other countries, victims' immigration status also is an issue. Applicants for Supplemental/Specialized Services funding should be legal service providers versed in relevant legal areas, have an understanding of federal criminal laws and procedure, and be culturally sensitive.

Funding for Supplemental/Specialized Services may be used to provide legal counsel to service providers in assisting trafficking victims with their various legal needs as part of a network of comprehensive, integrated

victim services. Legal service providers applying for Supplemental/Specialized Services funding should demonstrate a willingness and capacity to establish working relationships with Comprehensive Services sites and other NGOs/service providers (such as shelters, mental health and medical care providers, immigrant advocacy providers, and faith-based organizations) for collaboration and cooperation in providing adequate and appropriate services to trafficking victims. Applicant(s) should demonstrate an understanding of legal procedure in federal, state, and local justice systems and an awareness of the need to coordinate with law enforcement and other NGOs to provide appropriate and adequate legal services. Applicants should further indicate how they would perform such outreach and coordination in any given location and define the geographic area in which they have the capacity to provide legal services.

Mental Health/Counseling Services

Trafficking victims often experience extreme isolation, degradation, and abuse by their traffickers. Traffickers frequently deny mental health and medical treatment to victims to control or punish them, keep them from being discovered, and avoid incurring the expense of such care. Trafficking victims need mental health and medical assessment and treatment by providers who are versed in the dynamics of victimization, trauma issues, and appropriate interventions. Ideally, trafficking victims should receive such services from practitioners who are proficient in the victim's language and knowledgeable about the culture.

Applicants for Supplemental/Specialized Services to provide mental health services should describe their capacity to offer culturally competent services, including the language(s) in which services could be delivered. Applicants also should describe the geographic areas in which they have the capacity to serve victims and discuss their capacity to assess and treat victims (including the maximum number of victims that could be treated, length of time services could be offered, and number and type of treatment that could be provided) on short notice.

Additional General Information for Supplemental/Specialized Services Awards

Generally, Supplemental/Specialized Services funds may be used to support an entity or network that will provide appropriate and adequate housing, legal, mental health counseling, or other relevant form of assistance for victims of trafficking anywhere throughout the United States (or a large geographic region of the United States) on short notice. If more than one organization or agency proposes to form a network of providers to deliver Supplemental/Specialized Services, the application must identify one entity as the lead agency for purposes of grant administration and project coordination.

Regardless of the type of victim services proposed, applications should further describe applicants' capacity to provide Supplemental/Specialized Services:

- With very little notice and lead time.
- In any location nationwide or within a broad geographic region.
- For large numbers of victims.
- For victims with special needs or for whom resources may be even more limited, such as minors or victims with disabilities.
- For victims from diverse cultural and linguistic backgrounds.
- For victims who have experienced distinct or multiple forms of victimization (physical and sexual assault, forced labor, denial of medical care, etc.).

Applicants for Supplemental/Specialized Services funds must commit to collaborating as appropriate with recipients of funding for Comprehensive Services, and to the extent possible, with other service providers throughout the country who are addressing the needs of trafficking victims. In addition to the particular Supplemental/Specialized Services they propose to provide to victims, applicants should indicate their capacity to coordinate with Comprehensive Services funding recipients (and other service providers, as applicable) to ensure trafficking victims have access to the full range of victim services identified in the ''Comprehensive Services'' section.

Project Management: For both types of awards, Comprehensive Services and Supplemental/Specialized Services, the management structure, staffing, and overall organizational capability must be adequate to conduct projects successfully. Applicants must demonstrate that the project will be appropriately staffed and that key staff have significant experience in providing services and collaborating with other community resources.

Specifically, applications should provide evidence of the degree to which applicants possess:

- Experience in providing or the ability to provide services to a diverse or immigrant population.
- Understanding of crime victimization and resulting trauma.
- Knowledge of victims' rights and remedies.
- Experience in or the ability to make referrals to or to provide appropriate services.
- Ability to work in coordination with other (governmental and nongovernmental) agencies, such as benefits-issuing agencies.
- Cultural sensitivity.

Performance Measurement: To ensure compliance with the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that funding recipients will be required to collect and report data that measure the results of the projects implemented under this program. To ensure accountability for this data, the following performance measures are provided:

- Conduct a needs assessment in each Comprehensive Services site to identify gaps in existing services and available resources.
- Establish or enhance services in each Comprehensive Services site for victims of trafficking in the community based on findings from the needs assessment.
- Develop a plan for sustainability of the Comprehensive Services and Supplemental/Specialized Services after OVC project funding ends.

Award recipients will be required to document achievement of these measures in periodic progress reports submitted to OVC. Award recipients also will be required to provide a copy of the needs assessment tool and major findings and a copy of the preliminary plan to establish or enhance victim services in their community.

Eligibility Requirements: By statute, grants under this program may be awarded to states, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations.

For the purposes of this program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a state, including local courts, law enforcement agencies, prosecutor's offices, and shelters.

Selection Criteria: All applicants for Comprehensive Services funding and Supplemental/Specialized Services funding must address each of the following criteria in their applications, unless otherwise indicated. Applications will be rated by a review panel on the extent to which they meet the criteria below.

1. Problem(s) To Be Addressed

The problem statement should discuss how the characteristics of trafficking victims and existing resources demonstrate the need for trafficking victim services. Applicants must identify the community or geographic area in which the project will operate. The priority selection criteria and indicators of community need are identified earlier in this solicitation under the Program Strategy subsections for Comprehensive Services and Supplemental/Specialized Services.

2. Goals and Objectives

Applicants are encouraged to be realistic in developing their projects' goals and objectives. The overall goals of the project must be clearly defined and linked to the needs of trafficking victims set forth in the ''Problem(s) To Be Addressed'' section (above). Applicants must be specific in addressing identified problems. Each applicant must include a statement of purpose that describes the expected outcomes and achievements for the project period.

Project goals must be stated in clear and measurable terms so that project staff can track the project's progress. Project objectives must be clearly defined, measurable, and described. Objectives must be stated as a list of quantifiable activities that will assist applicants in achieving project goals.

3. Program Strategy/Design

The project design must be sound and contain programmatic elements directly linked to the achievement of the project's goal(s) and objectives. Specific information must be included about the types of services to be provided, the geographic community(ies) or area(s) where the services are provided, and any restrictions that might limit the provision of specific services to a victim or a certain geographic area. In addition, applications should describe the ability of the service provider(s) to perform, at a minimum, the implementation steps listed below.

For Comprehensive Services Awards:

Receipt of victim referrals
Initial intake and assessment of victims' needs
Development of individualized victim service plans
Provision and coordination of services
Periodic assessment of whether victims' needs are being met
Modification of services as appropriate throughout victims' recovery
Number and range of victims for whom appropriate services will be made available (e.g., women, men, children, victims of one or more forms of trafficking)
Range of time that services can be provided (e.g., days, weeks, months; business hours/24 hours)

For Supplemental/Specialized Services Awards:

Process for providing a particular victim service in response to urgent requests
Number and range of victims for whom appropriate services will be made available (e.g., women, men, children, victims of one or more forms of trafficking)
Range of time that services can be provided (e.g., days, weeks, months; business hours/24 hours)

All applicants (Comprehensive Services and Supplemental/Specialized Services) should further discuss their capacity to provide services:

- To accommodate fluctuating numbers of victims, but particularly large numbers of victims, on short notice.
- To serve victims with special needs or for whom resources may be even more limited, such as juveniles or persons with disabilities.
- To victims from diverse cultural and linguistic backgrounds.
- To victims who have experienced distinct or multiple forms of victimization (physical and sexual assault, forced labor, denial of medical care, etc.).
- That address the safety and security concerns experienced by trafficking victims.

All applicants must include a workplan/timeline chart for each year of the project period. The timeline must include the tasks to be completed to meet the project objectives, the months in which the tasks will be accomplished, the staff person(s) or entities responsible for completing each task. Applicants should describe the nature of all products (such as service delivery protocols) to be developed and note anticipated completion dates for each.

4. Program Management and Organizational Capability

All applicants will be evaluated on their capability to conduct the project successfully. The applicant organization's or agency's history of working collaboratively with other community agencies and their experience in serving diverse crime victims will be assessed. Applicants must demonstrate that proposed projects will be staffed appropriately with qualified persons to perform each of the project tasks. For each staff position, applicants must provide a resume (if specific staff have been identified) or job description (if staff have not yet been identified) in an appendix.

All applicants must describe their existing or proposed information management system and how it will support their capability to perform case management and collect data related to trafficking victims and the services provided to them. Specifically, applicants should describe the data they currently collect (if any) regarding their operations, including their capacity to track victims, the services provided to them, and the outcomes for victims (i.e., impact of services).

Applicants for Comprehensive Services awards will be required to enter into a collaborative working relationship with complementary government and NGOs to create a comprehensive, systemic response to trafficking victims. To demonstrate their capacity and willingness to do this, these applicants also must provide a copy of the signed Letter of Intent described above in ''Comprehensive Services: Coalition Building and Outreach.''

Applicants for Supplemental/Specialized Services awards also will be required to work collaboratively with other agencies and organizations to support a comprehensive, systemic response to trafficking victims. These applicants must state their willingness and capacity to do this in their applications for funding.

5. Program Evaluation

All applications must contain a plan for evaluating the accomplishment of project objectives. Applicants must describe what evaluation data will be gathered and analyzed and the resources that are being committed for this purpose. In determining the quality of the evaluation plan, the following factors will be considered:

- Extent to which the evaluation plan will provide the kind of information that contributes to the effectiveness of management and administration of the project, documents that objectives have been met, and determines the overall effectiveness of the project.
- Extent to which the proposed methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.
- Adequacy of the identified performance measures to demonstrate whether and to what extent the proposed strategy is meeting its short-term, intermediate, and long-term objectives.

6. Budget

All applicants (Comprehensive Services and Supplemental/Specialized Services) must provide a proposed budget and budget narrative for the proposed project. The budget must be complete, detailed, reasonable, allowable, and cost effective in relation to the activities proposed. OVC prefers that applicants use the Budget Detail Worksheet/Budget Narrative form (OJP Form 7150/1) provided in Section II of the application kit.

All applicants (Comprehensive Services and Supplemental/Specialized Services) must indicate in their budgets the amount of project funds for applicable standard program costs such as personnel, fringe benefits, equipment, supplies, travel, consultants/contracts, and indirect costs. In addition, under the category of ''Other Costs,'' budgets must indicate the total average projected cost of providing direct services to victims, based on a calculation of the number of victims anticipated to be served, the average anticipated number and type of services to be provided, and the average anticipated number of days services would be provided. Please see the sample budget detail sheet in the Forms Appendix of the Application Kit for an example.)

All applicants (Comprehensive Services and Supplemental/Specialized Services) should anticipate either a post-award meeting with the OVC program monitor or an OVC meeting for discretionary grantees each year of the project. For these meeting costs, applicants outside the Washington, DC, metropolitan area should budget $1,000 for travel, lodging, and per diem costs for one key project staff person to attend the meeting.

All applicants (Comprehensive Services and Supplemental/Specialized Services) also must set funds aside in their proposed budgets to support collaboration with the national training and technical assistance provider and evaluator for the Trafficking Program.

Specifically, all applicants must budget for the travel, lodging, and per diem expenses of project staff to attend one 2-day training event and meeting for all award recipients for each year of the project. (For Comprehensive Services sites, this should include the project director and one other key staff person; for Supplemental/Specialized Services, this should include one key staff person.) The location of this 2-day meeting will be determined at a later date. For budgeting purposes, applicants from the West Coast and Midwest should budget for these meetings to be held in Washington, DC. Applicants from the East Coast should budget for these meetings to be held on the West Coast. The purpose of this meeting will be to provide training and technical assistance and review program implementation, evaluation, and other related programmatic matters.

Applicants also must budget costs to attend one Financial Management Training Seminar sponsored by the Office of Justice Programs, Office of the Comptroller. Specific information (such as dates and locations of upcoming training events) to assist grantees in estimating such costs can be found at *www.ojp.usdoj.gov/oc/fmts.htm* and *www.ncja.org/financial_management.html.*

In addition to these amounts, all applicants should set aside 5 percent of budgeted project funds to support a range of ongoing training and technical assistance for program staff and 5 percent of budgeted project funds to support project evaluation. These set-asides should be indicated as line-item budget costs to provide flexibility and resources so that award recipients may benefit from training, technical assistance, and evaluation activities to develop, expand, or strengthen trafficking victim services.

By statute, federal funds for this project may not exceed 75 percent of total project costs; therefore, federal funds may be used to pay up to 75 percent of the total costs of a victim services project. The matching requirement is 25 percent of total project costs. Applicants should apply the match requirement over and above the total amount requested. (For example, if the grant award is $75,000, the total project cost would be $100,000. The match would therefore be $25,000 or 25 percent of total project costs.) The matching requirement may be met through cash or in-kind contributions, or a combination of both.

Additional Selection Considerations

In addition to the selection criteria listed above, the Office for Victims of Crime also may consider the community setting of applicants (urban, suburban, rural), regional balance, and the extent to which the priority selection criteria are met and documented when making awards. Applicants from small organizations are specifically invited to apply. Applicants must not discriminate based on the type of labor or services that victims were forced to perform.

Application: Applicants must follow the guidance provided in Section II of the Application Kit.

Dated: June 11, 2002.

John W. Gillis,

Director, Office for Victims of Crime.

[FR Doc. 02–15149 Filed 6–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office for Victims of Crime

[OJP(OVC)–1356]

Notice of Solicitation for Training and Technical Assistance for Victim Assistance to Trafficking Victims

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Notice is hereby given that the Office for Victims of Crime (OVC) is requesting applications for the Training and Technical Assistance for Victim Assistance to Trafficking Victims solicitation. The purpose of this solicitation is to support the development, expansion, or strengthening of victim service programs for victims of trafficking in persons funded under the Services for Trafficking Victims Discretionary Grant Program (Trafficking Program).

DATES: Applications for competitive programs must be received (not postmarked) at the OVC Training and Technical Assistance Center located at the address below on Monday, June 29, 2002, no later than 5:30 eastern standard time. OVC will not grant extensions of the due date.

ADDRESSES: All applications should be addressed to Office for Victims of Crime, c/o OVC Training and Technical Assistance Center, 10530 Rosehaven Street, Suite 400, Fairfax, Virginia 22030 (telephone 703–385–3200). Applicants must clearly write the name of the program being applied for in the lower left corner of the envelope. OVC does not accept faxed submissions. Please be advised that if an application does not reach the OVC Training and Technical Assistance Center (TTAC) by the due date, it will not be considered for funding regardless of the postmark date.

FOR FURTHER INFORMATION CONTACT: Michelle Avery Weston, Program Specialist (telephone 202–514–5084 or e-mail *averym@ojp.usdoj.gov*). Interested applicants should obtain the OVC FY 2002 Services for Trafficking Victims Discretionary Grant Application Kit. This application kit provides the necessary information and guidance for preparing and submitting an application for an OVC Services for Trafficking Victims Discretionary grant program award.

Section I of the application kit contains solicitation for the two competitive programs. *Section II* presents general application requirements and includes the required application forms. To request applicant kits, please call the OVC Resource Center at 1–800–627–6872 or call the OVC Reply Line at 202–616–1926. In addition, the application kit can be downloaded from the OVC World Wide Web home page at *www.ojp.usdoj.gov/ovc.*

SUPPLEMENTARY INFORMATION:

Type and Amount of Award: One cooperative agreement will be awarded in the amount of $200,000.

Award Period: Up to 36 months.

Purpose(s): The purpose of the Trafficking Training and Technical Assistance Program is to provide comprehensive, skills-building training and technical assistance to states, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations that have received funding under the Trafficking Program. This training and technical assistance will include:

- Assisting Trafficking Program funding recipients in assessing technical assistance needs and maintaining flexibility to address a variety of organizational and/or service needs.
- Promoting awareness among Trafficking Program funding recipients of resources and mentoring to meet the comprehensive needs of trafficking victims.
- Identifying and replicating/adapting promising practices in trafficking victim service delivery.

(Although the primary intended recipients of training and technical assistance provided through this project are grantees under the Trafficking Program, the training and technical assistance provider awarded funding under this program solicitation also may assist service providers who are not grant recipients, and federal, state/regional, and local government agencies engaged in anti-trafficking activities. Such assistance should be provided only when the needs of Program grantees have been sufficiently addressed, and to the extent feasible within existing budget limitations. For example, training and technical assistance materials developed for Program grantees ideally also should be appropriate/adaptable for wider dissemination and use beyond Trafficking Program grantees.)

Problem Statement: There is a critical need for training and technical assistance among service providers and criminal justice professionals who are serving trafficking victims. Given the diversity of trafficking victims' origins and forms of their victimization, their need for comprehensive services and intensive case management, their barriers to accessing services, and the fact that trafficking cases with varying numbers of victims may surface anywhere in the country, the challenges faced by service providers are clear. Existing service providers have been called on to develop and deliver expanded services on an ad hoc basis, often at a moment's notice and without receiving additional resources to support these expanded services. Many service providers throughout the United States remain unaware of the crime, the needs of victims, the existing services for trafficking victims in their area, if any, and the need to coordinate among government and nongovernment entities at all levels (local, state, regional, and federal).

The crime of trafficking requires more than just a law enforcement or victim service response, but a collaborative and integrative effort to address special needs and circumstances of trafficking victims. Criminal justice system-based professionals and community-based service providers need assistance in developing collaborative mechanisms to improve community responses to trafficking victims. Recipients of funding for victim services under the Services for Trafficking Victims Program who would be eligible for training and technical assistance under this project include representatives from a wide range of service professions, including but not limited to social services, legal services, mental health services, health care providers, faith-based organizations, refugee and migrant workers organizations, and the women's, children's, and crime victims' advocacy community.

Background: Under the provisions of the Trafficking Victims Protection Act of 2000 (Pub. L. No. 106–386), 22 U.S.C. 7101 *et. seq.,* Congress authorized an array of new services and protections for victims of trafficking. Congress appropriated $10,000,000 to the Department of Justice to support the development or enhancement of victim service programs for trafficking victims, and indicated that a percentage of funds should be dedicated to training and technical assistance related to victim services.

Program Strategy: OVC will competitively select an organization to implement training and technical assistance for Trafficking Program grantees in the form of a cooperative agreement. This responsibility will be carried out with the full collaboration of OVC Trafficking Program monitors who will provide input and guidance to the selected training and technical assistance provider regarding the needs assessment plan, selection of training topics, training curricula, and other deliverables. In addition, OVC and the selected training and technical assistance provider will work closely to exchange information and assess Trafficking Program grantee performance, based on information collected via formal (*e.g.,* categorical progress reports submitted by grantees, site visit observations, and reports) and informal (*e.g.,* periodic telephone and e-mail communication with grantees) methods.

Proposals in response to this solicitation should describe how this training and technical assistance program will be implemented, how the objectives will be achieved, and how the program will address the diverse needs of trafficking victim service providers. Specifically, proposals should:

- Identify the types of training and technical assistance requests anticipated and the strategies proposed to address them.
- Include a detailed discussion of the criteria for prioritizing training and technical assistance requests and the elements of a screening protocol for selecting sites requesting training and technical assistance.
- Address how the training and technical assistance provider will market materials developed for trafficking program grantees to other victim service providers assisting trafficking victims.
- Provide an implementation plan that includes a time-task plan outlining activities and deliverables. This implementation plan should demonstrate innovation in the design and delivery of training and technical assistance, and identify how resources will be used to maximize the impact of training and technical assistance in a cost-effective manner.

Objectives

- Assess the training and technical assistance needs of Trafficking Program grantees.
- Develop and facilitate the use of research-driven training and technical assistance materials.
- Provide technical assistance to Trafficking Program grantees to build their capacity to assess needs, initiate program planning, implement appropriate services for victims, and evaluate and sustain programs.
- Establish a network of experienced trafficking victim service providers who can contribute substantive input to the

development of training and technical assistance.

• Establish a mentor program of experienced trafficking victim service providers who will provide training and technical assistance on request.

• Enhance the skills of Trafficking Program grantees by providing training and technical assistance which might include but is not limited to the following subjects:

• Trafficking Program elements and requirements.

• Financial sustainability of programs.

• Coordination with federal, regional, state, and local public agencies.

• Confidentiality and victim safety/security.

• Jurisdiction issues.

• Evaluation of the quality and utility of the training and technical assistance services provided.

• Identification and access of resources for trafficking victims.

• Assist OVC in monitoring performance of Trafficking Program grantees by assessing progress toward program goals.

Deliverables: In addition to the strategy and content of the training and technical assistance design, the following are specific deliverables to be completed during the project period:

• Establish, in collaboration with OVC, an network of experienced trafficking victim service providers to inform topic selection and content guidelines for training and technical assistance materials, assist in the review and analysis of performance measure data, and assess the progress of Trafficking Program grantees.

• Identify and establish a network of experienced trafficking victim service providers to serve as mentors to Trafficking Program grantees.

• Develop a Trafficking Program grantees training and technical assistance needs assessment plan (to be delivered within 30 days after the grant award).

• Develop a protocol and plan for delivery of training and technical assistance that includes criteria for prioritizing requests and addresses different levels of technical assistance including immediate and long-range responses, comprehensive system response, and specialized response (to be delivered within 60 days after the grant award).

• Develop a training curriculum or curricula and generally increase the number of technical assistance and training tools that support delivery of appropriate and adequate services to trafficking victims (to be delivered within 180 days after the grant award).

• Provide additional ongoing training and technical assistance to Trafficking Program grantees that will enable them to improve direct services to trafficking victims.

• Assist Trafficking Program grantees in the development of protocols for effective case management and service delivery to trafficking victims, and collect/disseminate such protocols among other Trafficking Program grantees and victim service providers serving trafficking victims. Such protocols should address supporting victims in their participation in the criminal justice process and provide guidance on victim privacy and confidentiality.

The training and technical assistance delivery plan is subject to OVC review and approval. Training materials shall not include information about ongoing investigations or prosecutions, or disclose identities or locations of victims or other sensitive information. As requests for training and technical assistance may exceed the availability of resources, grantees must develop a plan that fosters technological innovation (such as Web-based dissemination) to maximize available resources at minimum cost.

Performance Measurement: To ensure compliance with the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that funding recipients will be required to collect and report data that measure the results of the projects implemented under this program. To ensure accountability for this data, the following performance measures are provided:

• The number of training and technical assistance requests fulfilled.

• The development of a trafficking victims staff training curriculum.

• The development of model protocols for victim case management and victim service delivery.

Award recipients will be required to document achievement of these measures in periodic progress reports submitted to OVC. Progress reports must include information regarding the composition and participation of the networks; the number, nature, and scope of training and technical assistance requests fulfilled; the development, pilot-testing, and revision of a trafficking victims staff training curriculum; and the number and scope of model protocols developed for victim case management and victim service delivery.

Evaluation: The performance measures identified in the preceding section represent minimal standards that the training and technical assistance grantee will be expected to meet. Applicants must provide an evaluation plan to self-assess performance and the impact of training and technical assistance efforts. This evaluation plan must:

• Describe the evaluation strategy (to collect data on the performance measures identified above and identify other measures to reflect the impact of training and technical assistance rendered).

• Provide a timetable for performance of the evaluation.

• Indicate the resources required to perform the evaluation.

Eligibility Requirements: As defined by statute, applicants may be states, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations.

Selection Criteria: Specific criteria include:

1. Problem(s) To Be Addressed

Applicants must demonstrate an indepth knowledge and understanding of the provision of direct services for victims of trafficking. Specifically, applicants must demonstrate the following:

• Knowledge of current issues/problems related to the delivery of appropriate and effective services to victims of trafficking, and the ability to adapt suitable victim-related materials and resources to meet the needs of trafficking victim service providers.

• Knowledge/understanding of the provision of direct services and case management appropriate for victims of trafficking in persons.

• Knowledge/understanding of service provision in situations involving large numbers of victims of trafficking, torture, or mass trauma.

• Knowledge of (and ideally, experience in) the federal criminal justice system as it relates to trafficking victims and victims of crime in general.

• Understanding of legal issues as they relate to victims of crime, generally, and to victims of trafficking, including advising victims about legal protections provided in the Trafficking Victims Protection Act of 2000.

• Understanding of the jurisdictional and coordination issues involved in the provision of services to victims of trafficking.

2. Goals and Objectives

Applicants are encouraged to be realistic in developing their project's goals and objectives. The overall goals of the project must be clearly defined and linked to the needs of service providers set forth in the ''Problems(s) To Be Addressed'' section (above).

Applicants must be specific in addressing identified problems. Each applicant must include a statement of purpose that describes the expected outcomes and achievements for the project period.

Project goals must be stated in clear and measurable terms so that project staff can track the project's progress. Project objectives must be clearly defined, measurable, and described. Objectives must be stated as a list of quantifiable activities that will assist applicants in achieving project goals.

3. Project Strategy/Design

The project design must support the purpose and goals of the Trafficking Program. The project strategy must include sufficient detail so that the reader can understand what will be accomplished, how it will be accomplished, and who will accomplish it. Applicants must provide a time-task plan that clearly identifies major activities and deliverables for the duration of the project. All proposed tasks should be presented in a way that allows a reviewer to see the logical progression of tasks and be able to relate the tasks directly to the accomplishment of project goal(s). Proposed activities should be realistic and reflect the project's allocated time, staff, and funding. A clear picture of the contents or components of products or training materials is important, as is a detailed plan for packaging and disseminating products to the target audience(s). In the past, reviewers have given higher scores to applications that describe how they will introduce products to the field; therefore, applicants are encouraged to provide such information. Detailed procedures for pilot-testing and refining training and technical assistance products also have resulted in more competitive applications.

4. Program Management and Organizational Capability

Applicants must allocate adequate staff resources to overall management of this project, and must demonstrate how their resources, capabilities, and experience will enable them to achieve the goals and accomplish the tasks of the project for which they are applying. Specifically, they must demonstrate experience in organizing and implementing high-quality training events and a proven ability to provide technical assistance, particularly for victim service providers and related criminal justice system or community-based personnel. Points will be awarded based on applicants' demonstrated capability to implement a national-scope, federally funded project, including evidence that applicants possess the requisite staff and expertise. Organizational capability will be assessed on the basis of (1) applicants' described management structure, previous experience with similar or related efforts, and financial capability; and (2) applicants' project management plan and documentation of the professional staff members' unique qualifications to perform their assigned tasks. Applicants must clearly establish that their experience and resources enable them to achieve the goals and objectives of this program. Additional desirable experience includes:

- Ability to understand cultural issues inherent in service provision to trafficking victims.
- Understanding of trafficking.
- Understanding of victims' unique needs (housing, medical services, and mental health services, etc.) and the comprehensive case management required to provide optimal services to victims.
- Understanding of/familiarity with federal criminal justice process and mechanisms for collaboration among criminal justice system-based professionals and community-based resources.
- Experience in or ability to develop coordinated community interventions and/or collaborations with local, state, tribal, or national entities to assist victims of trafficking.
- Familiarity with resources for victim assistance.

5. Program Evaluation

This criterion addresses an applicant's plan for measuring project progress and success. All applications must contain a plan for evaluating the accomplishment of project objectives. Applicants must describe what evaluation data will be gathered and analyzed and the resources that are being committed for this purpose. In determining the quality of the evaluation plan, the following factors will be considered:

- Extent to which the evaluation plan will provide the kind of information that contributes to the effectiveness of management and administration of the project, documents that objectives have been met, and determines the overall effectiveness and impact of the project.
- Extent to which the proposed methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.
- Adequacy of the identified performance measures to demonstrate whether and to what extent the proposed strategy is meeting its short-term, intermediate, and long-term objectives.

6. Budget

All applicants must provide a proposed budget and budget narrative for the proposed project. The budget must be complete, detailed, reasonable, allowable, and cost effective in relation to the activities proposed. OVC prefers that applicants use the Budget Detail Worksheet/Budget Narrative form (OJP Form 7150/1) provided in *Section II* of the application kit.

All applicants must indicate in their budgets the amount of project funds for applicable standard program costs such as personnel, fringe benefits, equipment, supplies, travel, consultants/contracts, and indirect costs. Please see the sample budget detail sheet in the Forms Appendix for an example.

All applicants should anticipate either a post-award meeting with the OVC program monitor or an OVC meeting for discretionary grantees each year of the project. For these meeting costs, applicants outside the Washington, DC, metropolitan area should budget $1,000 for travel, lodging, and per diem costs for one key project staff person to attend the meeting.

Applicants also must budget costs to attend one Financial Management Training Seminar sponsored by the Office of Justice Programs, Office of the Comptroller. Specific information (such as dates and locations of upcoming training events) to assist grantees in estimating such costs can be found at *www.ojp.usdoj.gov/oc/fmts.htm and www.ncja.org/financial_management.html.*

By statute, federal funds for this project may not exceed 75 percent of total project costs; therefore, federal funds may be used to pay up to 75 percent of the total costs of a victim services project. The matching requirement is 25 percent of total project costs. Applicants should apply the match requirement over and above the total amount requested. (For example, if the grant award is $200,000, the total project cost would be $266,666. The match would therefore be $66,666 or 25 percent of total project costs.) The matching requirement may be met through cash or in-kind contributions, or a combination of both.

Additional Selection Considerations

Applicants must identify the author(s) of grant applications submitted in response to this solicitation.

Dated: June 11, 2002.

John W. Gillis,

Director, Office for Victims of Crime.

[FR Doc. 02–15150 Filed 6–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the Disaster Unemployment Assistance (DUA) Handbook and Program Operating forms, including the ETA 90–2, Disaster Payment Activities Under the ''Stafford Disaster Relief Act.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 16, 2002.

ADDRESSES: Darryl Bauman, Office of Workforce Security, Division of Unemployment Operations, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–3218 (this is not a toll-free number) or *dbauman@doleta.gov* for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–707 (Sections 410 and 423) provide for benefit assistance to ''any individual unemployed as a result of a major disaster.'' State Workforce Agencies (SWA's), through agreements between the states and the Secretary of Labor, act as agents of the Secretary for the purpose of providing assistance to applicants in the various States who are unemployed as a result of a major disaster. The forms in Chapters III through V, VII and X of the DUA Handbook are used in connection with the provision of this benefit assistance. In the revised DUA Handbook, as approved by OMB on 10/19/1999, we have eliminated the use of Federally-mandated DUA initial claims, weekly claims, determinations of entitlement and overpayment forms. We have permitted the SWA's to adopt forms to better accommodate the types of disasters involved and the requirements of their automated eligibility determination and payment systems. The President is directed by the Act to provide DUA through agreements with states, which in his judgment have an adequate system for administering such assistance through existing state agencies. Without the data obtained from these reports, ETA would have no grasp on the program as it is administered by the states.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The data obtained from the Form ETA 90–2 are used by at least three organizational units within ETA. The Office of Workforce Security uses the data for evaluation of state agency performance on making payments and providing claimant services and for making required reports. The Employment Service uses the data to project funding needs in the areas of counseling, referrals to suitable work opportunities and suitable training. The Office of Financial and Administrative Management (OFAM) uses the data in accounting for the financial management of the program funds and fund transfers. In addition, the data are also used by the Federal Emergency Management Agency (FEMA), to whom the President has delegated the responsibility by Executive Order No. 12148, for administering the Act. All other forms (described above) are used by SWA's in operating the program and are not reports per se. Use of these forms by SWA's is essential to the operation of the DUA program.

Type of Review: Extension without change of currently approved collection.

Agency: Employment and Training Administration.

Title: Employment and Training Administration (ETA) Disaster Unemployment Assistance (DUA) Handbook and Program Operating Forms, Including the ETA 90–2, Disaster Payment Activities Under the ''Stafford Disaster Relief Act.''

OMB Number: 1205–0051.

Agency Number(s): DUA Handbook and Program Operating Forms, including the ETA 90–2.

Affected Public: Individuals, State Governments.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
ETA 90–2	50	6	300	1/6	50
Initial Application	® 11,000	1	11,000	1/6	1,833
Supplemental to Initial Application (self-empl.)	® 3,800	1	3,800	1/6	633
Weekly Claim	® 11,000	*6	66,000	1/12	5,500
Notice of Overpayment	235	1	235	1/4	59
Totals	26,035		81,035		8,075

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 2002.

Grace Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–15163 Filed 6–14–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), Longshore and Harbor Workers' Compensation Program, is soliciting comments concerning the proposed collection ''Request for Examination and/or Treatment (LS–1)''. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 16, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily by an employee in loading, unloading, repairing, or building a vessel. Under Section 7 of the Act, the employer/insurance carrier is responsible for furnishing medical care for the injured employee. The LS–1 serves two purposes: (1) It authorizes medical care, (2) and provides a vehicle for the treating physician to report the findings, treatment given, and anticipated physical condition of the employee. This information collection is currently approved by the Office of Management and Budget (OMB) for use through November 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information validity of the methodology and assumptions used;

• enhance the quality, utility and clarity of the information to be collected; and

III. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its responsibility to verify that proper medical treatment has been authorized and to determine the severity of a claimant's injuries for purposes of compensation benefits. There is no change to these forms since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Agency Number: LS–1.

Affected Public: Individual or households; Businesses or other for-profit.

Total Respondents 16,500.

Total Responses: 109,725.

Burden Hours per Response: 1.08.

Total Burden Hours: 118,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $40,598.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 11, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 02–15162 Filed 6–14–02; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, Theater Section, will be held by teleconference from 2 p.m.–3 p.m. on Friday, June 21, 2002 in Room 720 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms.

Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 11, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 02–15309 Filed 6–14–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 146th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 11, 2002 from 2 p.m.–5:30 p.m. in Room 527 and on July 12, 2002 from 9 a.m. to 1:15 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

The Council will meet in closed session on July 11th, from 2:00 to 5:30 p.m. for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of May 2, 2002, this session will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code. The remainder of meeting, from 9 a.m. to 1:15 p.m. on July 12th, will be open to the public on a space available basis. Following opening remarks and announcements, new Council members will be sworn in, after which there will be a presentation on ''Critical Links: Learning in the Arts,'' by Dr. James Catterall, UCLA Graduate School of Education. This will be followed by Congressional, White House, budget and planning updates. Former mayor of Cincinnati Roxanne Qualls and Mayor Raymond Caballero of El Paso will make presentations on the Mayors Institute on City Design. There will be additional guest presentations on Design grants *Structures for Inclusion* (Rural Studios/Design Corp: Bryan Bell) and Seattle Art Museum/Olympic Sculpture Park (Weiss/Manfredi architects: Chris Rogers, project director; Virginia Wright, museum board member). Other topics will include: Application Review for American Jazz Masters Fellowships, New Public Works/Design, and Leadership Initiatives; review of Guidelines for New Public Works; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: June 11, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 02–15116 Filed 6–14–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting; Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science

AGENCY: Institute of Museum and Library Services & National Commission on Libraries and Information Science.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board and the National Commission on Libraries and Information Science. This notice also describes the function of the boards. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 2 p.m.–5 p.m. on Thursday, June 27, 2002.

STATUS: Open.

ADDRESSES: The Hotel Washington, 515 15th Street, NW, Washington, DC. (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506. (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The United States National Commission on Libraries and Information Science (NCLIS) is established under Public Law 91–345 as amended, The National Commission on Libraries and Information Science Act. In accordance with section 5(b) of the Act, the commission has the responsibility for advising the Director of the Institute of Museum and Library Services on general policies relating to library services.

The meeting on Thursday, June 27, 2002 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

6th Annual Meeting of the National Museum Services Board and the National Commission on Libraries and Information Service in The Federal Room of The Hotel Washington, 515 15th Street, NW, Washington, DC, on Thursday, June 27, 2002; 2 p.m.–5 p.m.

I. The Chairs' Welcome and Minutes of the 5th Annual Meeting

II. Director's Welcome and Opening Remarks

III. 21st Century Librarian Initiative

IV. National Leadership Grants: Presentations by Grantees

V. National Award for Museum Service/ National Award for Library Service

VI. Old Business:

(1) Budget

(2) MSTA Reauthorization

VII. New Business:

(1) Status of Outcome Evaluations

(2) Update on Minnesota Budget

Dated: June 12, 2002.

Teresa LaHaie,

Administrative Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 02–15270 Filed 6–13–02; 10:14 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting; Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATES: 10:30 p.m.–12:30 p.m. on Friday, June 28, 2002.

STATUS: Open.

ADDRESSES: The Hotel Washington, 515 15th Street, NW., Washington, DC. (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506. (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the owners, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, June 28, 2002 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

84th Meeting of the National Museum Services Board at The Hotel Washington, 515 15th Street, NW, Washington, DC. The Federal Room on Friday, June 28, 2002; 10:30 am–12:30 pm (Open Meeting)

I. Chairman's Welcome
II. Approval of Minutes from the 83rd NMSB Meeting
III. Director's Report
IV. Staff Reports
  (a) Office of Management and Budget
  (b) Office of Public and Legislative Affairs
  (c) Office of Technology and Research
  (d) Office of Museum Services
  (e) Office of Library Services
V. 21st Century Leaner Initiative
VI. September 11, 2002 Update

Dated: June 12, 2002.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 02–15271 Filed 6–13–02; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences; Committee of Visitors (1755).

Date and Time: July 10–12, 2002; 8 a.m.–5 p.m. each day.

Place: Room 770, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Part-Open (See Agenda below).

Contact Person: Dr. Richard A. Behnke, Section Head, Upper Atmosphere Research Section, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8518.

Purpose of Meeting: To carry out Committee of Visitors (COV) review including program evaluation, GPRA assessments, and access to privilege materials.

Agenda: To provide oversight review of the Upper Atmosphere Research Section.

Closed: July 10 from 8 a.m.–5 p.m. July 11 from 8 a.m.–5 p.m. And July 12 from 8 a.m. –5 p.m. To review the merit review process covering funding decision of the Upper Atmosphere Research Section made during the immediate preceding three fiscal years.

Open: July 11 from 2 p.m.–5 p.m. To assess the results of NSF program investments in the Division of Atmosphere Sciences, Upper Atmosphere Research Section. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or to other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privilege intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 11, 2002.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 02–15188 Filed 6–14–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–03754–MLA and ASLBP No. 02–799–01-MLA]

ABB Prospects, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: ABB Prospects, Inc., CE Windsor Site, (Material License Amendment-Decommissioning)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a May 8, 2002 hearing request submitted by the Connecticut Department of Environmental Protection regarding a January 7, 2002 decommissioning plan submitted by ABB Prospects, Inc., for portions of the CE Windsor site in Windsor, Connecticut. The request was filed in response to a notice of opportunity to request a hearing and petition to intervene published in the **Federal Register** on April 10, 2002 (67 FR 17472).

The Presiding Officer in this proceeding is Administrative Judge Ann Marshall Young. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Lester S. Rubenstein has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with

Judges Young and Rubenstein in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ann Marshall Young, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Lester S. Rubenstein, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 29th day of May 2002.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–15166 Filed 6–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 9, 2002—3 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: June 11, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–15167 Filed 6–14–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 2002.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of June 1, 2002, of two deferrals contained in one special message for FY 2002. The message was transmitted to Congress on May 3, 2002.

Deferrals (Attachments A and B)

On May 31, 2002, OMB reapportioned the two previously reported FY 2002 deferrals (D02–01 and D02–02) removing the deferral designations based on a recent analysis that determined that the funds do not meet the definition for deferrals contained in Pub. L. 93–344. There is no programmatic effect of these actions. Therefore, as of June 1, 2002, no funds are being deferred. Pursuant to Pub. L. 93–344, until such time as the President transmits a special message to Congress on subsequent rescission proposals or deferrals no cumulative reports are required to be transmitted to the Congress.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below: 67 FR 34963, Thursday, May 16, 2002.

Mitchell E. Daniels, Jr.,

Director.

Attachments

Attachment A

STATUS OF FY 2002 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,993.6
Routine Executive releases through June 1, 2002	−840.8
Executive adjustment through June 1, 2002	−1,152.8
Overturned by the Congress	.....
Currently before the Congress	.....

BILLING CODE 3110–01–P

ATTACHMENT B

Status of FY 2002 Deferrals - As of June 1, 2002

(In thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases (-): Cumulative OMB/ Agency	Releases (-): Congressionally Required	Congressional Action	Cumulative Adjustments (-)	Amount Deferred as of 06/01/02
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D02-01	68,277		05/03/02	20,000			48,277 [1]	0
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D02-02	1,925,277		05/03/02	820,821			1,104,456 [1]	0
TOTAL, DEFERRALS		**1,993,554**			**840,821**			**1,152,733**	**0**

1. On May 31, 2002, OMB reapportioned the two previously reported FY 2002 deferrals (D02-01 and D02-02) removing the deferral designations based on a recent analysis that determined that the funds do not meet the definition for deferrals contained in P.L. 93-344. There is no programmatic effect of these actions. Therefore, as of June 1, 2002, no funds are being deferred. Pursuant to P.L. 93-344, until such time as the President transmits a special message to Congress on subsequent rescission proposals or deferrals no cumulative reports are required to be transmitted to the Congress.

[FR Doc. 02–15187 Filed 6–14–02; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–0475,

Rule 12d2–1 SEC File No. 270–98, OMB Control No. 3235–0081

Rule 12d2–2 SEC File No. 270–86, OMB Control No. 3235–0080

Rule 17Ab2–1 and Form CA–1SEC File No. 270–203, OMB Control No. 3235–0195

Rule 17Ad–3(b) SEC File No. 270–424, OMB Control No. 3235–0473

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange to mark the relevant order ticket either ''long'' or ''short.''

There are approximately 7,258 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 7,258 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges on, a national securities exchange. In addition, each respondent makes an estimated 59,071 annual responses, for an aggregate total of 428,743,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 59,595 burden hours.

Rule 12d2–1 (17 CFR 240.12d2–1) was adopted in 1935 pursuant to Sections 12 and 23 of the Exchange Act. The Rule provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Exchange Act and Rule 12d2–2 thereunder.[1] During the continuance of such suspension under Rule 12d2–1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under the Rule, the exchange must notify the Commission promptly of the effective date of such restoration.

The trading suspension notices serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced trading in a previously suspended security. They also provide the Commission with information necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of Section 12(d) of the Exchange Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without the Rule, the Commission would be unable to fully implement these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2–1. The burden of complying with the Rule is not evenly distributed among the exchanges since there are many more securities listed on the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC (''Amex'') than on the other exchanges.[2] However, for purposes of this filing, it is assumed that the number of responses is evenly divided among the exchanges. Since approximately 173 responses under Rule 12d2–1 are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one-half reporting hour per response, 86.5 annual burden hours for all exchanges.

Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25) were adopted in 1935 and 1952, respectively, pursuant to Sections 12 and 23 of the Exchange Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that the Exchange file with the Commission a Form 25 to delist the Security. Form 25 provides the Commission with the name of the security, the effective date of the delisting, and the date and type of event causing the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded. In addition, the applications for delisting required under paragraphs (c) and (d) of Rule 12d2–2 provide the Commission with the information necessary for it to determine that the delisting has been accomplished in accordance with the rules of the exchange and whether the delisting should be subject to any terms and conditions necessary for the protection of investors. Further, delisting applications are available to members of the public who may wish to comment or submit information to the Commission regarding the applications. Without the Rule, the Commission lacks the information necessary for it to fully meet these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2–2 and Form 25. The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the NYSE and the Amex than on the other exchanges. However, for purposes of this filing, the staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 687 responses under the Rule and Form are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 687 annual burden

[1] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and provides the procedures for taking such action.

[2] In fact, some exchanges do not file any trading suspension reports in a given year.

hours for all exchanges. In addition, since approximately 52 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average two reporting hours per response, 104 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 791 hours.

Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1 (17 CFR 249b.200) require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Exchange Act, (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently thirteen registered clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $17,911.

Rule 17Ad–3(b) (17 CFR 240. 17Ad–3) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that of the five transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Written comments are invited on: (a) Whether the existing collection of information is necessary for the proper performance of the functions of the agency, including whether the information continues to have practical utility; (b) the accuracy of the agency's estimate of the burden of the existing collection of information; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 5, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15134 Filed 6–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25609; 812–12356]

SBM Certificate Company; Notice of Application

June 11, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 28(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to section 28(c) of the Act approving certain proposed custodial arrangements.

Applicant: SBM Certificate Company (''SBM'').

FILING DATES: The application was filed on December 7, 2000, and amended on May 23, 2002 and June 7, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 8, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, 5101 River Road, Suite 101, Bethesda, Maryland, 20816.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management,

Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants Representations

1. Applicant, a Maryland corporation, is a face-amount certificate company registered under the Act. Applicant currently intends to offer four face-amount certificates (''Certificates'') registered under the Securities Act of 1933. In the future, applicant may offer additional Certificates. The Certificates are fixed income securities that entitle the holder to receive, at maturity, the face amount of the Certificate and interest credited thereon, less withdrawals and applicable fees and charges. To meet its payment obligations, applicant is required to maintain a minimum amount of reserves in ''qualified investments'' as defined in section 28(b) of the Act (''Reserves'').

2. Applicant proposes to enter into custodial arrangements with regard to its Reserves with one or more banks that meet certain requirements (''Custodians''). Applicant seeks an order approving the proposed form of custody agreement (''Agreement'') to be entered into by applicant with each Custodian. Under the requested order, applicant would be able to select and change Custodians in its discretion.

3. Each Custodian will maintain the Reserves to ensure that applicant meets its payment obligations under the terms and conditions of any outstanding Certificate. If applicant were to default on any obligation under a Certificate, each Custodian would be authorized to cure the default by liquidating so much of the Reserves held by it as necessary to discharge the obligation. In addition, each Custodian will perform the duties and functions typically performed by a custodian, such as securities registration and delivery, income collection, periodic reporting, and other safekeeping and processing functions.

Applicants Legal Analysis

1. Section 28(c) of the Act requires a registered face-amount certificate company to maintain the Reserves with a custodian that meets the requirements of section 26(a)(1) of the Act and in accordance with such terms and conditions as the Commission shall prescribe and as appropriate for the protection of investors. Under section 26(a)(1), a custodian generally must be a bank that has at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount which may not be less than $500,000.

2. Applicant requests an order under section 28(c) of the Act approving the Agreement. Applicant states that the Agreement contains provisions to maintain and safeguard the Reserves, including provisions governing (i) the holding, segregation, registration, depositing, and delivery of securities, (ii) the payment of monies and maintenance of bank accounts, and (iii) the management of real estate and real estate related investments, as well as establishing procedures to cure any defaults by applicant on its obligations under the Certificates and procedures for periodic reporting and inspection of the assets.[1] Applicant represents that it will seek an amended order from the Commission for any material changes in the substantive provisions of the Agreement.

3. Applicant states that it may seek to terminate Custodians and employ new Custodians for many reasons, including: (i) The availability of superior or specialized services through other Custodians; (ii) dissatisfaction with the quality of a Custodian's services; (iii) fee increases or the availability of comparable services from other Custodians at more competitive rates; (iv) changes in a Custodian's management, location, financial condition, or methods of operation; (v) regulatory developments or actions affecting the ability or qualification of a Custodian to serve as such; or (vi) a determination by a Custodian to cease offering its services.

4. Applicant will only enter into an Agreement approved by its board of directors (''Board''), including a majority of directors who are not interested persons within the meaning of Section 2(a)(19) of the Act (''Disinterested Directors''). In addition, the continuance of any Agreement would be subject to annual review by the Board, including a majority of the Disinterested Directors, to determine whether the quality of services provided by the Custodian remains satisfactory and the fees are reasonably competitive. Applicant submits, for all the reasons stated above, that its request is consistent with the protection of investors.

[1] Applicant states it will comply with rule 17f–4 under the Act as if it were a registered management investment company to the extent an Agreement permits a Custodian to maintain any portion of the Reserves in a securities depository.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15177 Filed 6–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46045; File No. SR–CBOE–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Reduction of the Fees Charged to Public Customers for Transactions in the CBOE Mini-NDX Index (MNX ™) Options

June 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 31, 2002, the Chicago Board Options Exchange, Inc. (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to modify its Fee Schedule to reduce the fees charged to public customers for transactions in the CBOE Mini-NDX Index (MNX ™).

The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE MNX ™ is based on 1/10th the value of the Nasdaq-100 Index® (NDX). This filing proposes to reduce customer transaction fees in MNX options to more closely match the rates charged to public customers trading competitive products at other exchanges. Specifically, this filing proposes to reduce the customer transaction fee to a flat $.15 per contract, rather than the previous rate of $.40 per contract with premium at or above $1, or $.20 per contract with premium below $1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and with section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No Written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 [6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 day of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–28 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15138 Filed 6–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46053; File No. SR–GSCC–00–12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Insolvency and Clearing Fund Requirements

June 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 5, 2000, Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission''), and on December 14, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to amend its clearing fund and insolvency rules to better protect itself and its members from certain types of legal risk.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 30, 1996, the Securities and Exchange Commission (''Commission'') issued an order (''Commission's Order'') approving GSCC's proposed rule change permitting foreign entities to become members of GSCC's netting system.[3] The rule change established application and continuing membership requirements for foreign entities, including the delivery to GSCC of an opinion of foreign counsel addressing the particular jurisdictional concerns raised by the admission of a foreign entity to netting system membership.[4]

Having gained experience from reviewing the legal opinions regarding foreign law that were provided in connection with the applications of the foreign banks that GSCC has admitted to its netting system to date, GSCC has determined to clarify its insolvency rule, Rule 22, in the manner described in subsection (i) below so that the insolvency rule more appropriately references the types of insolvency proceedings to which a foreign member

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* 15 U.S.C. 78(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release No. 36788 (January 30, 1996), 61 FR 4500 (February 6, 1996).

[4] GSCC also requires each prospective foreign member to provide an insolvency law opinion discussing applicable U.S. Federal and state laws.

might become subject. GSCC is also proposing to make conforming language changes to GSCC's rules dealing with applications for membership and continuing membership standards as they apply to foreign members.

Some of the legal opinions referred to in the previous paragraph have indicated that GSCC would be exposed to ''legal risk'' as a result of the application of the particular jurisdiction's law to a foreign member's insolvency or bankruptcy. The legal risk can take the form of prohibiting or delaying GSCC from: accessing some or all of the clearing fund deposit of the member; performing its netting, close-out, or liquidation of transactions; or the setting off of obligations as set forth in its clearing fund rule (Rule 4), its ceasing to act rule (Rule 21), or its insolvency rule (Rule 22), or the taking of any other action contemplated by these rules. GSCC is proposing to amend its rules to better protect itself and its members from these types of legal risk in the circumstances where GSCC reasonably determines based upon factors such as outside legal advice or a discussion with a relevant regulator that such legal risk exists. The proposed rule changes are described more fully in subsection (ii) below.

GSCC's experience in connection with the admission of U.S. branches of foreign banks has also indicated that certain issues that are described in these opinions could affect GSCC's rights in the event of the insolvency or bankruptcy of a domestic member. GSCC believes, given the importance of its being able to exercise its rights as set forth in its clearing fund rule, its ceasing to act rule, and its insolvency rule that the proposed rule changes discussed below in subsection (ii) should also apply to domestic members that present GSCC with legal risk. GSCC would reasonably determine that such legal risk exists based upon factors such as outside legal advice or a discussion with a relevant regulator.

GSCC is also proposing to add language to GSCC's clearing fund rule clarifying GSCC's right to rehypothecate the cash deposits of its clearing fund.

(i) *Changes to Insolvency Rule*

GSCC's insolvency rule contains a section that lists the various types of events or proceedings which would permit GSCC to treat a member as insolvent. The rule was written utilizing terms common in United States insolvency or bankruptcy proceedings. GSCC is proposing to amend its insolvency rule to add language so that the rule more appropriately references the types of insolvency proceedings to which a foreign member might become subject. GSCC has broad discretion pursuant to its rules to impose additional terms and conditions on members that it deems to be necessary to protect itself and its members. GSCC's foreign membership agreements have already been expanded to incorporate the insolvency triggering events that GSCC now proposes to make part of its rules. The proposed changes will bring the rules into conformity with the foreign membership agreements and specifically give GSCC the right pursuant to its rules to declare a foreign member to be insolvent under the requisite circumstances.[5]

(ii) *Clearing Fund Requirements*

One of GSCC's most important risk management tools is its clearing fund, which is comprised of three components: (1) cash; (2) certain netting-eligible securities; and (3) eligible letters of credit. The purposes served by the clearing fund are to: (1) have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions; (2) maintain a total asset amount sufficient to satisfy potential losses to GSCC and its members resulting from the failure of more than one member (and the failure of such members' counterparties to pay their pro rata allocation of loss); and (3) ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

A clearing fund deposit, to serve its intended purpose, should be immediately accessible to GSCC in the event of the member's bankruptcy or insolvency. However, the application of certain domestic or foreign laws could delay or prevent GSCC from accessing the portion of the member's clearing fund deposit that is in the form of cash and securities. The portion of the clearing fund deposit that is in the form of letters of credit (''LCs'') is generally not subject to the same risk because LCs are typically not considered to be part of the bankrupt/insolvent entity's estate.

The rules with respect to the calculation of a member's clearing fund deposit do not currently address the legal risk detailed above. In order to better protect itself and its members, GSCC is seeking the authority to require a domestic or foreign member that in management's reasonable view (which may be based upon factors such as outside legal advice or discussion with a relevant regulator) presents heightened legal risk to GSCC to: (1) deposit additional collateral over what would normally be required under GSCC's clearing fund rule and/or (2) post some additional portion of its clearing fund deposit requirement in the form of an LC.[6]

(iii) *Clarification of Rehypothecation Right with Respect to Cash Deposits*

GSCC's clearing fund rule contains a provision that permits GSCC to rehypothecate, transfer, or assign its clearing fund collateral in the event that GSCC needs to secure a loan or to satisfy an obligation incurred by it, in each case incident to its clearance and settlement business. GSCC desires to clarify the reference in the provision to the portions of the clearing fund that may be rehypothecated, transferred, or assigned by GSCC. The provision refers to the securities and the LCs that members pledge or deposit to the clearing fund as well as the ''deposits or other instruments in which the cash deposits'' to the clearing fund may be invested. GSCC believes that this language could be read to not actually refer to the cash deposits themselves. GSCC believes that it is prudent to specifically add a reference to ''cash deposits'' to eliminate any doubt as to GSCC's ability to use the cash portion of the clearing fund in the manner set forth in the clearing fund rule.

The proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to GSCC because it will help protect GSCC and its members in the event of the insolvency of a foreign member.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

[5] In addition, the proposed rule change makes conforming language changes to GSCC's Rule 2 (Members) and Rule 3 (Financial Responsibility and Operational Capability Standards) as they apply to foreign members.

[6] GSCC's clearing fund rule requires that LCs constitute no more than 70 percent of a member's clearing fund deposit. GSCC is seeking the authority to ask for a higher percentage in the form of an LC if circumstances warrant.

[7] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–12 and should be submitted by July 8, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46058; File No. SR–OCC–2002–08]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Agreement To Provide Clearance and Settlement Services to the Island Futures Exchange, LLC With Respect to Security Futures

June 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 15, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the Security Futures Agreement for Clearing and Settlement Services entered into between OCC and The Island Futures Exchange, LLC (''IFX'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is preparing to clear security futures for a number of markets. One such market is IFX. As it represented in a previous rule filing, OCC intends to file with the Commission the agreements it enters into with these markets when negotiated.[3] This filing concerns the Security Futures Agreement for Clearing and Settlement services that OCC has entered into with IFX (''IFX Clearing Agreement'').

The terms of the IFX Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Liffe Markets, LLC, formerly Nasdaq LIFFE, LLC, (''NqLX Clearing Agreement'') which has been approved by the Commission.[4] The terms of the IFX Clearing Agreement are substantially the same as the terms of the NqLX Clearing Agreement. The notable differences are as follows:

Section 5, ''Comparison of Security Futures Transactions; Settlement Prices,'' has been modified to specify the parties' agreements with respect to setting a daily settlement price if OCC does not accept IFX's reported price. New paragraph (c) has been added to address OCC's right to determine a final settlement price under certain circumstances. Section 5 also makes explicit that the parties' agreements establishing such settlement prices must be consistent with OCC's by-laws and rules.[5] New paragraph (c) is added to Section 16, ''Indemnification,'' to cover intellectual property claims. New language in Section 19, ''Breach of Agreement-Termination,'' provides additional grounds for termination. The parties' agreements on confidentiality of information have been incorporated in a letter agreement between the parties.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] See Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351 [File No. SR–OCC–2001–07] (order approving comprehensive set of rule changes pertaining to clearance and settlement of security futures transactions). OCC also has filed a proposed rule change with the Commission [File No. SR–OCC–2002–07] requesting approval of clearing agreements with OneChicago and the Chicago Mercantile Exchange.

[4] *Id.*

[5] Article XII, Sections 5 and 6; Rule 1301(d).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1)[7] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–08 and should be submitted by July 8, 2002.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15135 Filed 6–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46055; File No. SR–PCX–2002–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a One-Year Extension of the Automatic Opening Rotations Pilot Program

June 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2002, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to extend its Automated Opening Rotations (''AOR'') pilot program for one year, until September 30, 2003. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.[4] On August 21, 2000[5] and August 13, 2001,[6] respectively, the Commission granted one-year extensions to the pilot program. The extension program is currently set to expire on September 30, 2002.[7] AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. In its order approving the pilot program, the Commission stated that it expects the Exchange to study the issues related to the Commission's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of AOR.

The Exchange is requesting an additional one-year extension of the pilot program from September 30, 2002 to September 30, 2003. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program in order to properly address the Commission's concerns before seeking permanent approval. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, because it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999).

[5] *See* Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

[6] *See* Securities Exchange Act Release No. 44688 (August 13, 2001) 66 FR 43600 (August 20, 2001).

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)[11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–31 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15137 Filed 6–14–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46054; File No. SR–PCX–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Obligation of ETP Holders To Maintain Books and Records

June 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. PCX filed Amendment No. 1 to the proposed rule change on May 17, 2002.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 10b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes a new rule, PCX Rule 2.23, in order to codify the existing obligations of an equity trading permit holder (''ETP Holder'') to keep and preserve books and records. The text of the proposed rule change is below; new language is italicized.

Rule 2.23 Each ETP Holder must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder (including any interpretation relating thereto) as though such ETP Holders were brokers or dealers registered with the SEC pursuant to Section 15 of the Exchange Act. No ETP Holder may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange rules obligate ETP Holders to make, keep current, and preserve certain books and records.[6] In addition, the Exchange relies on the Commission's comprehensive books and records rules, Rule 17a–3[7] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requests that the proposed rule change be considered pursuant to section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(6) thereunder, and proposes to add a parenthetical phrase ''including any interpretation relating thereto'' to the first sentence of proposed PCX Rule 2.23. *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 16, 2002 (''Amendment No. 1''). Because the Form 19b–4 submitted on April 22, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on May 17, 2002, the date on which Amendment No. 1 was filed with the Commission.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See, e.g.,* PCX Rule 4.1, Commentary .02(g) (requirement that an ETP Firm maintain records on spot commodities); PCX Rule 4.14(a) (requirement that ETP Holders maintain daily margin records).

[7] 17 CFR 240.17a–3.

17a–4 [8] of the Act, as the basis of its authority to require ETP Holders to maintain and retain books and records not covered under the Exchange's express rules.

The Exchange now proposes to adopt a new rule to codify the books and records requirement and to make clear to ETP Holders that the Commission's comprehensive books and records rule applies to each ETP Holder. As proposed, the new rule would require each ETP Holder to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation thereunder). The proposed rule further provides that no ETP Holder may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation. Otherwise, the proposed rule does not impose any additional requirements on the ETP Holders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[11] the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File Number SR–PCX–2002–12 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15139 Filed 6–14–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 240.17a–4.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that PCX's original Form 19b–4, dated April 22, 2002, satisfied the pre-filing notice requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] The proposed rule change became effective on May 17, 2002, the date on which Amendment No. 1 was filed and, therefore, the 60 day abrogation period began on May 17, 2002.

[15] 17 CFR 200.30(a)(12).

SMALL BUSINESS ADMINISTRATION

Region VIII Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Tuesday, June 25, 2002 at 8:30 a.m. at the Orthopedic Institute, 810 East 23rd Street, Sioux Falls, South Dakota, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Janice M. Camp in writing or by fax, in order to be put on the agenda. Janice M. Camp, U.S. Small Business Administration, South Dakota District Office, 110 South Phillips Avenue, Suite 200, Sioux Falls, SD 57104, phone (605) 330–4243, ext. 30, fax (605) 330–4215, e-mail: *janice.camp@sba.gov*. If unable to reach Janice M. Camp, please contact Michele Arends at (605) 330–4243, ext. 11 or at (605) 367–4891, e-mail: *michele.arends@sba.gov*.

For more information, see our Web site at *www.sba.gov/ombudsman*.

Dated: June 3, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–15157 Filed 6–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Monday, July 15, 2002 at 10 a.m. at the McHenry County College, Room B–116, 8900 US Highway 14, Crystal Lake, IL 60012, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Gary Peele in writing or by fax, in order to be put on the agenda. Gary Peele, U.S. Small Business Administration, Illinois District Office, 500 West Madison Street, Chicago, IL 60661, phone (312)

353–7353, fax (202) 481-2031, e-mail: *gary.peele@sba.gov*.

For more information, see our Web site at *www.sba.gov/ombudsman*.

Dated: June 5, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–15158 Filed 6–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Information Quality Guidelines; Correction

AGENCY: Small Business Administration.

ACTION: Notice; correction.

SUMMARY: The U.S. Small Business Administration (''SBA'') published in the **Federal Register** on June 4, 2002, a notice seeking public comments on its draft report (''Report'') concerning SBA's proposed information quality guidelines. The notice contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Chet Francis, Office of the Chief Information Officer, (202) 205–6289.

Corrections

In the **Federal Register** of June 4, 2002, in FR Doc. 02–13989, on page 38541, in the first column, correct:

1. The **DATES** section to read:

DATES: Comments must be received on or before July 5, 2002; and

2. The first date stated in the last paragraph in the **Supplementary Information** section, by correcting that paragraph to read: After consideration of public comments, SBA will make appropriate revisions to the draft Report and submit it to OMB for review by no later than August 1, 2002. Upon completion of OMB's review and finalization of the Report, SBA will make its final Report available to the public by no later than October 1, 2002.

Dated: June 11, 2002.

Lawrence E. Barrett,

Chief Information Officer.

[FR Doc. 02–15159 Filed 6–14–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 C.F.R. Part 1320, the U.S. Office of Special Counsel (OSC) is requesting review and clearance from the Office of Management and Budget (OMB) for use of three previously approved information collections consisting of customer survey forms, with minor revisions. The current OMB approval for these collections of information expired on March 31, 2002; OSC does not plan to use the forms again until October 1, 2002. On March 14, 2002, an initial notice of this request for OMB approval, with a request for public comment, was published in the *Federal Register* at 65 F.R. 20504. No comments were received. Current and former Federal employees and applicants, other federal agencies, state and local government employees, and the general public are again invited to send comments to OMB on these information collection activities.

DATES: Comments should be received on or before July 17, 2002.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs at the Office of Management and Budget, Attention: Desk Officer for U.S. Office of Special Counsel, New Executive Office Building, 725 Seventeenth Street, N.W., Room 10235, Washington, DC 20503. A copy of any comments should also be sent to Kathryn Stackhouse, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Copies of the collections of information are available from Kathryn Stackhouse, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505; telephone (202) 653–8971; facsimile (202) 653–5151. Copies are also available on OSC's Web site, at www.osc.gov/reading.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for: (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code; and (3) the provision of a secure channel through which Federal employees may make disclosures of information evidencing violations of law, rule or regulation; gross waste of funds; gross mismanagement; abuse of authority; or a substantial and specific danger to public health or safety.

OSC is required to conduct an annual survey of all individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall—(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress.

OSC uses three forms to survey potential respondents in three types of matters closed during the previous fiscal year. Each of these forms is described below. The forms to be submitted to OMB contain minor modifications to existing forms, including increased use of ''plain English'' and format changes. The Privacy Act notice on the cover letters has also been updated. In addition, the estimated number of annual respondents for each survey has been reduced to reflect estimated survey response rates, rather than the number of surveys sent.

Comment is invited on the following collections of information:

1. Title of Collection: OSC Survey—Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC–48a; OMB Control Number 3255–0003)

Summary of Collection of Information: This form is used to survey those individuals whose allegations of possible prohibited personnel practices or other prohibited activity have been resolved during the prior fiscal year. The survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at OSC.

Need for and Proposed Use of the Information: This survey is required by law under section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note. Results are summarized, in statistical form, in OSC's annual report to Congress, also as required by law. In addition, the survey results are reported to OSC's senior staff, who use them to: (1) assess levels of satisfaction with services rendered; (2) link results with management planning and other agency operations; (3) identify areas where improvements can be made; (4) enhance

awareness of service issues at all levels of the agency; and (5) improve service to complainants and others seeking the agency's assistance.

Likely Respondents: Current and former Federal employees and applicants, and their representatives, state and local government employees, and their representatives, and others who have filed a complaint of prohibited personnel practices or other prohibited activity with OSC.

Estimated Annual Number of Respondents: 682.

Frequency: Annual.

Estimated Average Amount of Time for Reporting and Recordkeeping: 20 minutes.

Estimated Annual Burden: 227 hours.

2. Title of Collection: OSC Survey—Hatch Act Advisory Opinion (Agency Form Number OSC–48b; OMB Control Number 3255–0003)

Summary of Collection of Information: This form is used to survey those individuals who received a written advisory opinion on the application of the Hatch Act during the prior fiscal year. The survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at OSC; and (3) satisfied with the treatment received at OSC.

Need for and Proposed Use of the Information: This survey is required by law under section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note. Results are summarized, in statistical form, in OSC's annual report to Congress, also as required by law. In addition, the survey results are reported to OSC's senior staff, who use them to: (1) assess levels of satisfaction with services rendered; (2) link results with management planning and other agency operations; (3) identify areas where improvements can be made; (4) enhance awareness of service issues at all levels of the agency; and (5) improve service to complainants and others seeking the agency's assistance.

Likely Respondents: Current and former Federal employees and applicants, and their representatives, state and local government employees, and their representatives, and others who have received a written advisory opinion on the Hatch Act from OSC.

Estimated Annual Number of Respondents: 65.

Frequency: Annual.

Estimated Average Amount of Time for Reporting and Recordkeeping: 12 minutes.

Estimated Annual Burden: 13 hours.

3. Title of Collection: OSC Survey—Whistleblower Disclosure (Agency Form Number OSC–48c; OMB Control Number 3255–0003)

Summary of Collection of Information: This form is used to survey those individuals who have filed a whistleblower disclosure, and whose matter was closed during the prior fiscal year. The survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at OSC; and (3) satisfied with the treatment received at OSC.

Need for and Proposed Use of the Information: This survey is required by law under section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note. Results are summarized, in statistical form, in OSC's annual report to Congress, also as required by law. In addition, the survey results are reported to OSC's senior staff, who use them to: (1) assess levels of satisfaction with services rendered; (2) link results with management planning and other agency operations; (3) identify areas where improvements can be made; (4) enhance awareness of service issues at all levels of the agency; and (5) improve service to complainants and others seeking the agency's assistance.

Likely Respondents: Current and former Federal employees and applicants, and their representatives, who have filed a whistleblower disclosure with OSC.

Estimated Annual Number of Respondents: 93.

Frequency: Annual.

Estimated Average Amount of Time for Reporting and Recordkeeping: 15 minutes.

Estimated Annual Burden: 23 hours.

Dated: June 10, 2002.

Timothy Hannapel,

Deputy Special Counsel.

[FR Doc. 02–15156 Filed 6–14–02; 8:45 am]

BILLING CODE 7405–01–S

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement—Proposed Commercial Recreational and Residential Developments on Tellico Reservoir, Loudon County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act (NEPA). TVA will prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) to assess the impacts of a project for commercial recreation and residential development proposed by a private developer (LTR Properties, Inc.) in the area encompassing TVA property on the Tellico Reservoir in east Tennessee (Loudon County). The proposed project would encompass approximately 266.7 hectares (659 acres): 46.5 hectares (115 acres) of TVA land, 85.8 hectares (212 acres) of land purchased by the developer from the Tellico Reservoir Development Agency (TRDA), and 132.3 hectares (327 acres) of private land. TVA must decide whether to make about 46.5 hectares (115 acres) of federal property on the Tellico Reservation available for LTR Properties, Inc., to use in constructing a residential resort and golf course community. Additionally, TVA must decide whether to approve the use of about 2.1 hectares (5 acres) of TVA property, below the 249.93-meter (820-foot) elevation and lying between the former TRDA property and Tellico Reservoir, for a small golf course.

DATES: Comments on the scope of the environmental review must be received on or before July 26, 2002.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone: (865) 632–8517; or e-mail: *rltoennisson@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA acquired the Tellico Reservation properties, consisting of about 15,271 hectares (37,337 acres), for the construction of Tellico Dam and Reservoir which were completed in 1978. Part of this property (4,513 hectares or 11,151 acres) was acquired for economic development purposes, and, in 1982, these acres were sold to Tellico Reservoir Development Agency (TRDA), which is a Tennessee state agency created for that purpose. TVA retains approximately 5,116 hectares (12,643 acres) of Tellico Reservoir shoreline property for public use and/or use in TVA projects.

During the past few years, TVA and TRDA have received several development proposals from the private

sector asking to use the TRDA property allocated for commercial recreation, together with TVA Tellico Reservation property including the subject 46.5-hectare (115-acre) tract. In 2000, TVA prepared a land use plan to allocate public land for varying uses: TVA Project Operations, Sensitive Resource Management, Natural Resource Conservation, Industrial/Commercial Development, Recreation, and Residential Access. Under the 2000 land use plan, 18.4 hectares (45.4 acres) of the property requested from TVA for the development is allocated for recreation use and the remaining 27.1 hectares (69.6 acres) is allocated for natural resource conservation. The total 46.5 hectares (115 acres) is currently available to the public for informal recreational use but is currently accessible only from water or across private land.

In May 2002, a private developer (LTR Properties, Inc.) requested that TVA make available 46.5 hectares (115 acres) of federal property on the Tellico Reservation for their use in constructing a residential resort and golf course development. This entire project would use the adjoining former TRDA property, private land, as well as the requested 46.5 hectares (115 acres) of TVA land and would eventually include: approximately 1,200 residential units; a lodge complex; a small, 9-hole golf course; a larger, 18-hole golf course; a marina complex; a retail complex; and supporting recreational infrastructure. In addition to making a decision on whether to make the 46.5 hectares (115 acres) available, TVA must decide whether to approve the use of about 2.1 hectares (5 acres) of TVA property for the small, 9-hole golf course.

Because TVA has received a request which supports regional development goals and the original Tellico Project purposes of economic development, TVA has decided to evaluate the proposal. The agency is providing early notice of the proposal to facilitate the identification of issues to be addressed and the development of alternatives to be assessed in the environmental review. The alternatives to be analyzed have not been fully developed at this time but, at a minimum, involve either no action or full or partial development of the 46.5 hectares (115 acres) including the use of the 2.1 hectares (5 acres) requested by LTR Properties, Inc.

Based on the results of the previous public interaction for projects on the Tellico Reservation, TVA anticipates that the EA or EIS will include discussion of the potential effects of alternatives on the following resources: visual resources, cultural resources, threatened and endangered species, terrestrial ecology, wetlands, recreation, water quality, aquatic ecology, and socioeconomics. TVA is interested in receiving additional comments on the issues to be addressed. Written comments on the scope of the environmental review should be received on or before July 26, 2002.

TVA will commence the preparation of an EA for the proposed project after considering public comments received from this scoping process. In the event that information gathered or analyses conducted in preparing this EA indicate that the proposal could have a significant impact on the environment, the agency will prepare an EIS. If TVA decides to prepare an EIS, the scoping process now underway for the EA will be used for the EIS and will not be repeated.

TVA expects to hold a public meeting to provide more information and to receive comments on the proposal in July 2002. Time, location, and place will be announced in local newspapers and may be obtained by contacting the persons listed above.

Dated: June 11, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–15194 Filed 6–14–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 31, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12418.

Date Filed: May 30, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PTC31 SOUTH 0124, dated 24 May 2002

TC31 South Pacific (except between New Zealand and USA) Expedited Resolution 311s.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–15144 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 31, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6345.

Date Filed: May 30, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 20, 2002.

Description: Application of United Parcel Service Co., requesting renewal of its certificate authority to engage in scheduled foreign air transportation of property and mail between Miami, FL and Los Angeles, CA; via intermediate points in Colombia, Ecuador, and Panama; and the coterminal points Manaus, Brasilia, Rio Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador, Brazil. UPS further requests the right to integrate such authority with its other certificate and exemption authority to provide foreign air transportation.

Docket Number: OST–2002–12417.

Date Filed: May 30, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 20, 2002.

Description: Application of Multi-Aero Inc., d/b/a Air Choice One (Multi-Aero), pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to operate scheduled passenger service as a commuter air carrier, as required by 14 CFR Section 204.3. Multi-Aero also seeks permission, pursuant to 14 CFR part 215, to operate under the trade name ''Air Choice One'', to the extent that may be necessary.

Docket Number: OST–2002–12421.

Date Filed: May 31, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 2002.

Description: Application of Transjet Airways AB, pursuant to 49 U.S.C. Section 41302. et seq., and Parts 211 and 302, Subpart B, requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property, and mail between a point or points in Sweden and a point or points in the United States, pursuant to the Air Transport Services Agreement between the United States of America and the Kingdom of Sweden.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–15143 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at the Madera Municipal Airport, Madera, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration proposes to rule and invites public comment on the release of approximately 1.332 acres of land at Madera Municipal Airport, Madera, California, from all restrictions of the surplus property agreement. The purpose of the release is to permit the sale of the property located in the north east side of the airport and immediately adjacent to Aviation Drive to an individual for the construction of an aircraft hangar on land cost-prohibitive for the City of Madera to develop.

DATES: Comments must be received on or before July 17, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Sam Scheider, Airport Operations Manager, Madera Municipal Airport, 4020 Aviation Drive, Madera, CA 93637.

FOR FURTHER INFORMATION CONTACT: Mr. Ellsworth Chan, Manager, Safety and Standards Branch, AWP–620, 15000 Aviation Blvd., Lawndale, CA 90261, Telephone: (310) 725–3620. The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

The following is a brief overview of the request:

The City of Madera requested the release of approximately 1.332 acres of dedicated airport land at Madera Municipal Airport, Madera, California, from surplus property agreement obligations. The purpose of the release is to permit the sale of property that is cost prohibitive for the City of Madera to develop into any kind of aeronautical use. The property is an economic deterrent as the site is being at low elevation so as to require significant fill to bring it to grade. The net proceeds will be utilized for airport improvements for projects identified in the Airport Capital Improvement Plan.

Issued in Hawthorne, California, on June 5, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–15198 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 28, 2002 on page 14999.

DATES: Comments must be submitted on or before July 17, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Financial Responsibility for Licensed Launch Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0601.

Forms(s): NA.

Affected Public: A total of 5 licensees authorized to conduct licensed launch activities.

Abstract: Demonstration of compliance with 14 CFR part 440, on the part of the licensee, requires the provision of meaningful, accurate, and comprehensive information. This information enables AST to determine the maximum probable loss (MPL) resulting from licensed launch activities, and to preempt any conflicting or inconsistent requirements in any agreement the licensee may have previously entered into with other agencies of the United States concerning access to or use of United States launch property or launch services.

Estimated Annual Burden Hours: An estimated 1305 hours annually.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 7, 2002.

Judith D. Street,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 02–15141 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–40]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 8, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12419–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.go.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–674–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Pat Nininger (816–329–4129), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 12, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12419–1.

Petitioner: Liberty Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 23.562.

Description of Relief Sought: To allow Liberty Aerospace, Inc. to obtain an exemption from 14 CFR 23.562 for the Liberty Model XL–2. The Liberty XL–2 meets the criteria for JAR–ALA class aircraft, with a maximum gross weight below 1654 pounds and flap down stall speed at or below 45 knots. The exemption will permit the XL–2 to receive a part 23 normal category type certification, as required for IFR or Night VFR operations. The XL–2 will be equipped with compensating design features that provide suitable occupant protection in an emergency dynamic landing condition.

[FR Doc. 02–15197 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2002, there were six applications approved. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Morgantown, West Virginia.

Application Number: 02–06–C–00–MGW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $229,493.

Earliest Charge Effective Date: June 4, 2004.

Estimated Charge Expiration Date: March 1, 2008.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Nonscheduled/on-demand air carriers; and (2) unscheduled Part 121 charter operators for hire to the general public.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Morgantown Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Design and construct aircraft rescue and firefighting/snow equipment facility.

Acquire snow removal equipment (SRE).

Design and construct taxiway A extension.

Rotating beacon.

Safety area study, runway 18/36.

Master plan study.

Decision Date: April 3, 2002.

For Further Information Contact: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 02–07–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $7,566,700.

Earliest Charge Effective Date: September 1, 2003.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct taxiway C from taxiway D to runway 12/30.

Construct vehicle service road.

Maintenance (snow removal) equipment storage facility.

Decision Date: April 3, 2002.

For Further Information Contact: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Akron-Canton Regional Airport Authority, Akron, Ohio.

Application Number: 02–05–C–00–CAK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $7,277,000.

Earliest Charge Effective Date: September 1, 2002.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Akron-Canton Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Property acquisition—Nickison.
Property acquisition—Lockhart.
Property acquisition—Tucker.
SRE—snow blower.
Passenger loading bridge.
Engine generator—backup power.
Runaway 5/23 overlay.
Entrance road rehabilitation.
SRE—high speed rotary broom.
Terminal baggage claim expansion.
Terminal expansion/rehabilitation.
Shift/extension runway 1/19 phase II: fill 19 end.
Property acquisition—Peters.
Passenger loading bridge II.

Brief Description of Projects Approved For Use:

Relocate Mt. Pleasant and Frank Roads.
Runway 1 extension.
Runway 19 threshold relocation.

Brief Description of Disapproved Project: Airport access improvement—Shuffel Road interchange.

Determination: The FAA has determined that the scope of the project describes the construction of an interchange that does not exclusively serve airport traffic as is required by paragraph 553(a)(3) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b).

Decision Date: April 4, 2002.

For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7287.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 02–05–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $6,734,192.

Earliest Charge Effective Date: February 1, 2003.

Estimated Charge Expiration Date: October 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Nonschedule/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determinated that the proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Projects Approved for Collection and Use:

Replacement of flight and baggage information display system.
Airfield signage standardization (guidance signs)—phase 2.
Concourse escalator replacement.
Terminal lobby modernization.
800 Megahertz radio system.
Terminal apron reconstruction—phase 5A.

Decision Date: April 12, 2002.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Port of Oakland, Oakland, California.

Application Number: 02–11–C–00–OAK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $7,000,000.

Earliest Charge Effective Date: October 1, 2003.

Estimated Charge Expiration Date: January 1, 2004.

Classes of Air Carriers Not Required to Collect PFC's: (1) Nonscheduled/on-demand air carriers filing FAA Form 1800–31; and (2) commuters or small certificated air carriers filing Department of Transportation Form 298–C T1 or E1.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Oakland International Airport.

Brief Description of Project Approved for Collection and Use: Terminal One gate improvement.

Brief Description of Project Approved for use at a $3.00 PFC Level: Construct remote overnight aircraft parking apron.

Decision Date: April 16, 2002.

For Further Information Contact: Marlys Vendervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 02–09–C–00–MDW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $181,326,845.

Earliest Charge Effective Date: October 1, 2045.

Estimated Charge Expiration Date: April 1, 2051.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago Midway Airport.

Brief Description of Projects Approved for Collection and Use:

Federal inspection services facility.
Replace visual approach slope indicator lights with precision approach path indicator lights.
North triangle ramp development.
West triangle ramp development.
Residential insulation 2002–2004.
Noise barrier extensions.
Airfield operations area gate and booth rehabilitation/reconfiguration.
Equipment acquisition 2002–2004: snow removal and security equipment.

Brief Description of Withdrawn Project: Obstruction removal.

Determination: This project was withdrawn by the public agency by letter dated April 4, 2002. Therefore, the FAA did not rule on this project in this Record of Decision.

Decision date: April 18, 2002.

For Further Information Contact: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
00–03–C–01–INL, International Falls, MN*	03/22/02	$316,992	$316,992	08/01/06	06/01/05
95–01–C–05–MKE, Milwaukee, WI	03/26/02	22,745,277	21,780,797	04/01/99	04/01/99
95–03–C–04–MKE, Milwaukee, WI	03/26/02	64,133,333	42,350,240	05/01/04	05/01/04

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–04–U–01–MKE, Milwaukee, WI	03/26/02	NA	NA	05/01/04	05/01/04
00–05–U–01–MKE, Milwaukee, WI	03/26/02	NA	NA	05/01/04	05/01/04
00–06–C–01–MKE, Milwaukee, WI	03/26/02	22,667,375	88,029,494	07/01/06	12/01/11
00–01–C–01–FAY, Fayetteville, NC	04/04/02	892,620	1,026,513	10/01/02	11/01/05
95–01–C–02–BFD, Lewis Run, PA	04/08/02	285,366	288,090	05/01/03	05/01/03
99–04–C–01–bli, Bellingham, WA*	04/23/02	1,400,000	1,400,000	03/01/04	06/01/03
98–03–C–01–LAN, Lansing, MI	04/26/02	3,306,343	2,906,220	06/01/02	02/01/01
94–01–C–02–BUR, Burbank, CA	04/30/02	32,989,000	33,330,107	09/01/97	09/01/97
96–02–U–01–BUR, Burbank, CA	04/30/02	NA	NA	09/01/97	09/01/97

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For International Falls, MN, this change is effective on June 1, 2002. For Bellingham, WA, this change is effective on July 1, 2002.

Issued in Washington, DC, on May 31, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–15142 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34177]

Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC

Iowa, Chicago & Eastern Railroad Corporation (ICE)[1] filed a notice of exemption under 49 CFR 1150.31 on June 7, 2002, to acquire and operate the following rail lines and assets owned by I&M Rail Link, LLC (IMRL), a Class II carrier: (1) IMRL's existing rail lines, which extend approximately 1,125 miles between Chicago, IL, Kansas City, MO, and Minneapolis/St. Paul, MN, and across Northern Iowa and Southern Minnesota; (2) approximately 275 miles of IMRL's incidental trackage rights over lines of other carriers; (3) IMRL's ownership and operational interests in The Kansas City Terminal Railway Company; (4) IMRL's ownership and operational interests in the so-called ''Joint Agency'' in Kansas City (jointly owned with The Kansas City Southern Railway Company); and (5) IMRL's interests in jointly owned and/or operated industry trackage in various locations, including South Beloit, IL, Beloit and Janesville, WI, and Clinton, IA.

ICE states that DME and Holdings expect to file an application in STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.-Control-Iowa, Chicago & Eastern Railroad Corporation,* pursuant to 49 U.S.C. 11323(a)(3) and 49 CFR 1180.2(c), to continue in control of ICE once ICE acquires the IMRL lines and becomes a rail carrier.

Because the projected revenues of the rail lines to be operated exceed $5 million, ICE certified to the Board, on February 26, 2002, that the required notice of its rail line acquisition was posted at the workplace of the employees of IMRL and was served on the national offices of all labor unions with employees on the affected lines on February 25, 2002. *See* 49 CFR 1150.35(a), referring to 49 CFR 1150.32(e).

ICE reported that it intends to consummate the transaction on or after June 28, 2002.

Prior to ICE's filing of the notice of exemption, the Board received a number of submissions from interested persons expressing concern about the transaction.[2] These persons identified a number of potential issues, including financial, environmental, shipper, and labor-related matters in connection with ICE's anticipated acquisition. Given the passage of time since the Board received these submissions in this relatively large transaction, the lack of any response on the record from ICE to the submissions, and the uncertainty as to whether ICE has even received all of the submissions, this notice is being issued to advise interested parties of the process to be used for handling this matter.

Under the Board's exemption rules, ICE's exemption to acquire and operate IMRL's lines is due to become effective on June 28, 2002 (21 days after the notice was filed). *See* 49 CFR 1150.35(e). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the transaction. Stay petitions must be filed within 7 days of the filing of the notice of exemption (no later than June 14, 2002). Any comments on the notice of exemption that parties wish the Board to consider prior to the effective date of the exemption must be filed by June 19, 2002. Replies to stay petitions and other comments will be due by June 21, 2002. To be considered, stay petitions and all comments, regardless of when submitted to the Board, must be served on ICE's representative in a manner that ensures receipt by June 14, 2002 (for stay petitions) and by June 19, 2002 (for all other comments).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34177, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William C. Sippel, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

[1] ICE states that it is a noncarrier subsidiary of Cedar American Rail Holdings, Inc. (Holdings), which is a wholly owned subsidiary of Dakota, Minnesota & Eastern Railroad Corporation (DME).

[2] The Board has received correspondence from the following persons raising concerns about, or opposing, ICE's proposed acquisition: Iowa Department of Transportation, municipality of Dubuque, IA, and Sethness Products Company (financial viability, environmental/community impacts, and shipper effects); East Central Intergovernmental Association (community and shipper impacts); Tyson Foods, Inc. (rail service); Iowa Traction Railroad Company (financial viability, rail service, and downgrading of IMRL's grain lines); municipalities of Marquette and Mason City, IA, and Winona, MN (community concerns); Dubuque County Board of Supervisors (grain and agricultural marketing); Brotherhood of Locomotive Engineers (labor protection for IMRL employees and financial viability); and Ronald D. Barczak and William G. Jungbauer (IMRL employee injury claims).

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: June 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–15202 Filed 6–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34214]

Wallowa County, Oregon—Acquisition and Operation Exemption—Rail Line of Idaho Northern & Pacific Railroad Company Between Elgin and Joseph, OR

Wallowa County, Oregon (the County), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate a 62.58-mile line of railroad of Idaho Northern & Pacific Railroad Company (INPR) extending between milepost 21.0 at or near Elgin and milepost 83.58 at or near Joseph in Wallowa and Union Counties, OR (Joseph rail line or the line).[1]

According to the County, an agreement has been reached between the County and INPR regarding sale and operation of the rail line.[2] The County certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The transaction was scheduled to be consummated on or shortly after May 31, 2002 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34214, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: June 7, 2002.

Vernon A. Williams,

Secretary.

[FR Doc. 02–15097 Filed 6–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] In *Idaho Northern & Pacific Railroad Company—Abandonment Exemption—in Wallowa and Union Counties, OR,* Docket No. AB–433X (STB served Mar. 12, 1997) (March 12, 1997 decision), the Board granted a petition for exemption under former 49 U.S.C. 10505 from the prior approval requirements of former 49 U.S.C. 10903 *et seq.* for INPR to abandon a 60.58-mile portion (all but 2 miles) of its Joseph rail line, between milepost 23.0 near Elgin and milepost 83.58 at Joseph, in Wallowa and Union Counties, OR, subject to certain conditions (largely relating to environmental concerns in connection with salvage activities) and provided that the exemption would become effective on April 17, 1997. In a decision served in this proceeding on December 13, 2001, the Board substituted a modified environmental condition for the conditions imposed in the March 12, 1997 decision. The County states that INPR has not consummated abandonment of any part of the Joseph rail line.

[2] The County states that INPR will operate the line until the later of: (1) 90 days after full payment of the purchase price; or (2) the designation and qualification of a new operator. The County will have a residual common carrier obligation to operate the line. The County states that no new authority is needed for INPR to operate the line because INPR never exercised the authority granted by the Board for it to abandon or discontinue service over the described 60.58-mile portion of the Joseph rail line.

DEPARTMENT OF THE TREASURY

Customs Service

Importer Self-Assessment Program

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of the implementation of the Importer Self-Assessment (ISA) program and describes the requirements for participation in, and benefits under, the ISA. The ISA, which was developed by Customs under its regulatory audit authority, allows interested importers to assess their own compliance with Customs laws and regulations. Participation in the ISA is open to all importers who are participating members in the Customs-Trade Partnership Against Terrorism.

DATE: Participation in the ISA will be open to all qualified importers beginning on June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Customs Internet website (http://www.customs.gov/imp-exp1/comply/isa.htm) or Russell Ugone, Director, Trade Agreements Branch, Regulatory Audit Division (202–927–0728).

SUPPLEMENTARY INFORMATION:

Background

As a consequence of the passage of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057), an important objective of Customs in the trade compliance process has been to maximize importer compliance with U.S. trade laws while, at the same time, facilitating the importation and entry of admissible merchandise. To meet this goal, Customs has made a comprehensive effort to review, improve, and redesign, on an ongoing basis, the trade compliance process using established business practices, reengineered tools, and new methodologies that improve customer service without compromising the enforcement aspect of the Customs mission.

In order to enable interested importers to participate in a program that would allow them to assess their own compliance with Customs laws and regulations on a continuing basis, Customs on April 24, 1998, published in the **Federal Register** (63 FR 20442) a notice of a plan to conduct a test regarding the Importer Compliance Monitoring Program (ICMP). On April 30, 2002, Customs published a notice in the **Federal Register** (67 FR 21322) advising the public of the termination of the ICMP test because importer participation in the ICMP remained below the level anticipated by Customs when the ICMP procedures were developed. That notice stated that the ICMP was being discontinued in favor of a new program. The new program, Importer Self-Assessment (ISA) will continue the self-assessment principles of the ICMP while relying on new methodologies which provide upfront benefits and a more flexible approach.

The purpose of this notice is to describe the operation of the ISA, including the requirements for participation in, and benefits under, the ISA program.

Description of the Importer Self-Assessment Program

Overview

The ISA program is a joint government-business initiative designed to build cooperative relationships that strengthen trade compliance. It is based on the premise that importers with strong internal controls achieve the highest level of compliance with Customs laws and regulations. The ISA program provides a means to recognize

and support importers that have implemented such systems.

All importers who are current members of the Customs-Trade Partnership Against Terrorism (C–TPAT) may apply for ISA by signing an ISA Memorandum of Understanding (MOU) and completing an ISA questionnaire. Customs will then assess the applicant's readiness to assume the responsibilities of ISA. When signed by both parties, the MOU will establish a partnership between the importer and Customs and will provide further benefits as described below. ISA applications will be accepted beginning on June 17, 2002.

ISA Participation Requirements

In order to participate in the ISA program, an importer must:

1. Become a member with full benefits of the C–TPAT.

2. Be a resident importer in the United States with a minimum of two years importing experience.

3. Agree to comply with all applicable Customs laws and regulations.

4. Have and maintain a system of business records that demonstrates the accuracy of Customs transactions.

5. Complete an ISA questionnaire and sign an ISA MOU under which the importer agrees to:

a. Establish, document, and implement internal controls;

b. Perform periodic testing of the system based on risk;

c. Make appropriate adjustments to internal controls;

d. Inform Customs through appropriate disclosures of material errors identified through company reviews;

e. Maintain an audit trail from financial records to Customs declarations;

f. Maintain results of testing for five years and make test information available to Customs on request; and

g. Submit an annual written notification to Customs to confirm the identity of the company ISA contact, and confirm the importer continues to meet the requirements of the ISA program as specifically listed here and in the MOU.

6. Have the ability to connect to the Internet.

Application Process

1. Required Information

Each application for participation in the ISA program must include the following information and documentation:

a. The importer's name;

b. A unique importer number (for example, SSN, EIN, Customs Assigned Importer#, DUNS#);

c. A statement certifying to the importer's participation in C–TPAT;

d. A statement certifying to the importer's ability to connect to the Internet; and

e. A signed ISA MOU and completed ISA questionnaire.

2. Customs Review of Application

After the importer has submitted an application, Customs will review the company submission. This review will include a risk assessment of the applicant and review of the application to determine the applicant's readiness to assume responsibilities for self-assessment. In some cases a Customs multi-disciplinary team may visit the applicant to consult with the company, to discuss and review the company's internal controls. This will not be an audit and will not involve extensive testing. The purpose of the consultation is to determine if the applicant is ready to assume the responsibilities of self-assessment and to provide Customs assistance and training as appropriate. If Customs determines that the company is not ready to assume the responsibilities of self-assessment, Customs will continue to work with the company to strengthen and improve their program. If Customs determines the applicant is ready to assume the responsibilities of self-assessment, Customs will sign the MOU.

Customs reserves the right, in its discretion, to approve or disapprove an application. Further, in selecting applicants for participation in ISA, Customs reserves the right to establish priorities for the processing and approval of applications based upon the volume and/or nature of each applicant's Customs transactions and other factors, including whether the applicant had a previous designation as a low-risk importer, whether the applicant made a prior application under the ICMP test, and whether the applicant was engaged in management processes involving a full-time Account Manager from Customs. First priority will be given to importers with low-risk designation.

ISA Potential Benefits

Once accepted into the ISA program, the importer becomes eligible for the following benefits:

1. The importer will be entitled to receive entry summary trade data, including analysis support, from Customs.

2. Consultation, guidance, and training by Customs will be available to the importer as requested and as resources permit (for compliance assistance, risk assessments, internal controls, Customs audit trails, etc.).

3. There will be an opportunity to apply for coverage of multiple business units.

4. The importer will be exempt from all comprehensive compliance audits (accounts may be subject to onsite examinations for specific reasons but will not be subject to comprehensive assessments of all Customs operations).

5. The importer will be able to use a hotline to Regulatory Audit Division key liaison officials.

6. With respect to an importer's right to make a prior disclosure pursuant to 19 U.S.C. 1592(c) or 1593a(c) and 19 CFR 162.74 when the importer becomes aware of facts that may represent a violation of 19 U.S.C. 1592 or 1593a, an ISA participant may utilize the following process: Unless, during Customs assistance, consultation or training with an ISA participant, Customs becomes aware of errors in which there is an indication of a fraudulent violation of 19 U.S.C. 1592 or 1593a, Customs will provide a written notice to the participant of such errors and allow 30 days from the date of the notification for the participant to assess and, if determined necessary, to file a prior disclosure pursuant to 19 CFR 162.74. This benefit does not apply if the matter is already the subject of an on-going Customs investigation.

7. In the event that civil penalties or liquidated damages are assessed against an importer, the importer's participation in ISA will be considered in the disposition of the case.

8. The importer will have access to a Customs team consisting of an Account Manager, an auditor and a trade analyst assigned to service ISA participants;

9. Additional benefits may be made available, tailored to industry needs (by mutual agreement).

ISA Continuing Participation Requirements

ISA participants must remain in compliance with the requirements of the ISA MOU, which include the annual notification to Customs. In connection with this notification, Customs will determine if additional discussions or reviews of company controls or documentation are necessary. In addition, ISA participants are responsible for making appropriate ongoing changes to internal controls as needed.

As indicated above, ISA participants as a general rule will not be subjected to any routine or periodic on-site reviews or audits, other than

consultations with Customs account managers and auditors for training, support and compliance improvement purposes. However, a participant may be subject to an audit or on-site review of a specific issue related to an identified trade compliance risk. In such instances, Customs and the participant will work together to determine a mutually acceptable course of action wherever possible.

If a participant fails to follow the terms of the MOU, fails to exercise reasonable care in the execution of participant obligations under the program or fails to abide by applicable laws and regulations, the participant may be subject to removal from the ISA program. If Customs believes that there is a basis for proposing the removal of a participant from the ISA program, a written notice of proposed removal will be provided to the participant and will apprise the participant of the facts or conduct warranting removal. The participant may respond to the proposed removal by writing to the Director, Regulatory Audit Division, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, within 15 days of the date of the notice of proposed removal. The participant's response should address the facts or conduct charges contained in the notice and should state how compliance will be achieved. A final written decision on the proposed removal will be issued to the participant by Customs after the 15-day response period has closed. However, in the case of willfulness or where public health interests or safety are concerned, a removal from the ISA program may be effective immediately as a final action and without opportunity for written response.

Detailed information concerning the ISA program is maintained at the Customs Internet website (*http://www.customs.gov/imp-exp1/comply/isa.htm*). The ISA Handbook available at that website contains general information and forms needed to apply for the program and specific information and details about program requirements and benefits.

Dated: June 13, 2002.

Douglas M. Browning,

Deputy Commissioner of Customs.

[FR Doc. 02–15308 Filed 6–13–02; 2:15 pm]

BILLING CODE 4820–02–P

Federal Register

Monday,
June 17, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 47

Aircraft Registration Requirements; Clarification of ''Court of Competent Jurisdiction''; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No. FAA–2002–12377; Notice No. 02–10]

RIN 2120–AH75

Aircraft Registration Requirements; Clarification of ''Court of Competent Jurisdiction''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to amend language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This proposal is needed to clarify the term ''court of competent jurisdiction.'' This action is intended to clearly describe what constitutes satisfactory evidence to the Administrator that foreign registration of an aircraft has ended or is invalid.

DATES: Send your comments on or before July 17, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12377 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Julie A. Stanford, Aircraft Registration Branch, AFS–750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954–3131.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–12377.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so that international civil aviation could be developed in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III—NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that ''aircraft have the nationality of the State in which they are registered.'' Therefore, ''an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another'' (Article 18). The rules for accomplishing a change in registration mandate that ''the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations'' (Article 19).

Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft form its registry. Upon request, the contracting State of last registration, in accordance with Article 21 of the Chicago Convention, furnishes information to the importing State that the registration of a specific aircraft has ended and the aircraft is no longer on that State's registry.

In promulgating § 47.37, the Administrator determined that for purposes of United States registration, satisfactory evidence of termination of foreign registration included ''a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid'' (14 CFR 47.37(b)(2)).

The Administrator has interpreted the phrase ''court of competent jurisdiction'' to be a court of the country where the aircraft was last registered. In each of two recent cases (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration,* 206 F.3d 1042, vacated, 216 F.3d 1304 (11th Cir. 2000) [hereinafter referred to as IAL Aircraft] and *Air One Helicopters, Inc.* v. *Federal Aviation Admin.,* 86 F.3d 880 (9th Cir. 1996) [hereinafter referred to as Air One]), a divided panel of the court interpreted the phrase ''court of competent jurisdiction'' differently from the FAA. In Air One, the Ninth Circuit implicitly decided that a United States

court of appeals was itself a ''court of competent jurisdiction'' capable of rejecting the position of Spanish registry officials that the aircraft's Spanish registry was valid. In IAL Aircraft, the Eleventh Circuit held expressly that a state trial court having jurisdiction over the aircraft in rem was a ''court of competent jurisdiction'' that could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid. On July 6, 2000, the Eleventh Circuit vacated its earlier decision on the grounds that the court lacked Article III jurisdiction at the time the decision was issued, in light of IAL Aircraft's undisclosed sale of the aircraft while the case was pending before the court.

The FAA does not agree with these decisions rejecting its interpretation of its own regulation, an interpretation that, under governing principles of administrative law, should have been given deference by the courts. However, the FAA does not believe that adhering to its position and continuing to litigate is worth the potential harm done to international relations by possible additional judicial decisions forcing the FAA to register aircraft that remain under foreign registration. These judicial decisions may simply ''encourage foreign courts to rule, in subsequent cases, that aircraft registered by the FAA in the United States are in fact 'validly' registered here'' (Air One, O'Scannlain, J., dissenting).

General Discussion of the Proposal

The panel majority in IAL Aircraft suggested the FAA consider amending or clarifying the regulation. Accordingly, the FAA is proposing in this NPRM to amend § 47.37(b)(2) to clarify the phrase ''court of competent jurisdiction.'' The proposed amendment would add language to § 47.37(b)(2) to more clearly describe that the ''court of competent jurisdiction'' must be a court of the country where the aircraft was last registered. As discussed under the background section, this amendment is necessary for FAA compliance with the obligations contained in the Chicago Convention.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with this proposed regulation. As stated previously, this amendment is necessary for FAA compliance with the agreements contained in the Convention.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs.

The issues addressed by the proposed change occur infrequently. FAA is aware of only two cases where judgments were pursued and obtained in countries other than where the aircraft was last registered (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration,* 206 F.3d 1042, 1045, vacated, 216 F.3d 1304 (11th Cir. 2000) and *Air One Helicopters, Inc.* v. *Federal Aviation Admin.,* 86 F.3d 880 (9th Cir. 1996). This would indicate that any other similar situations would have been in accordance with FAA's interpretation of the regulation, *i.e.,* the judgment was obtained in the country where the aircraft was last registered.

If adopted, the proposed change would affect only those few cases which otherwise might have been filed within the United States rather than in the country where the aircraft was last registered. While there may be some additional costs associated with those cases, such costs would vary according to the country of last registration and in some cases may be less than those normally associated with obtaining a proper judgment from a court of the United States.

The proposed change offers the benefits of compliance with international treaty (Convention on International Civil Aviation, 61 Stat. 1180) and Section 44102 of Title 49, United States Code. The benefits of complying with international law appear to justify additional costs, if any, associated with obtaining a judgment from a court in the country where the aircraft was last registered. Accordingly, our assessment of this proposal indicates that its economic impact is minimal.

Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation.)

However, for regulations with an expected minimal impact above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. It is determined that the expected impact is so minimal that the proposal does not warrant a full Evaluation as statement to that effect and the basis for it is included in proposed regulation. Since this final rule revises and clarifies FAA rulemaking procedures, the expected outcome is to have a minimal impact with positive net benefits. The FAA requests comments with supporting

justification regarding the FAA determination of minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 established ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasons should be clear.

The proposed rule clarifies the term ''court of competent jurisdiction'' to clearly describe what constitutes satisfactory evidence to the Administrator that foreign registration of an aircraft has ended or is invalid. Its economic impact is minimal. Therefore, we certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including, both barriers affecting the export of American goods and services to foreign counties and barriers affecting the import of foreign goods and services into the United States. In accordance with the above statute and policy, the FAA has assessed the potential affect of this proposed rule and has determined that it would have negligible impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate on a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposal is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 47 of Title 14, Code of Federal Regulations, as follows:

PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Amend § 4737 by revising paragraph (b)(2) to read as follows:

§ 47.37 Aircraft last previously registered in a foreign country.

* * * * *

(b) * * *

(2) A final judgment or decree of a court of competent jurisdiction of the foreign country, determining that, under the laws of that country, the registration ahs become invalid.

Dated: Issued in Washington, DC, on May 17, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–15195 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–13–M

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Federal Register

Vol. 67, No. 116

Monday, June 17, 2002

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CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 17, 2002

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Test procedures—
Dishwashers; published 12-18-01
Dishwashers; correction; published 5-1-02

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania; published 5-3-02
Air quality implementation plans; approval and promulgation; various States:
New Hampshire; published 4-16-02

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
South Carolina; published 5-8-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Tribal Self-Governance Amendments of 2000; implementation:
Indian Health Service; tribal self-governance; published 5-17-02

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Calvert Cliffs Nuclear Power Plant, MD; security zone; published 6-17-02

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Safety fitness procedures—
Safety auditors, investigators, and inspectors; certification; published 3-19-02

TREASURY DEPARTMENT
Comptroller of the Currency
Bank activities and operations:
Electronic banking; published 5-17-02

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Extended care services; copayments; published 5-17-02
Filipino veterans eligible for hospital care, nursing home care, and medical services; published 6-17-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
Rodeo bulls; testing requirement eliminated; comments due by 6-24-02; published 4-25-02 [FR 02-10110]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
RUS operational controls; exceptions under Section 306E of the RE Act; comments due by 6-24-02; published 5-24-02 [FR 02-13102]

AGRICULTURE DEPARTMENT
Highly erodible land and wetland conservation:
Categorical minimal effect exemptions; comments due by 6-24-02; published 4-23-02 [FR 02-09700]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; comments due by 6-27-02; published 5-28-02 [FR 02-13255]
Marine mammals:
Sea turtle conservation—
Shrimp trawling requirements; Atlantic waters; turtle excluder devices; comments due by 6-24-02; published 5-30-02 [FR 02-13564]

COMMODITY FUTURES TRADING COMMISSION
Commodity Futures Modernization Act; implementation:
Trading facilities and clearing organizations; new regulatory framework; amendments; comments due by 6-25-02; published 4-26-02 [FR 02-10031]

DEFENSE DEPARTMENT
Acquisition regulations:
Berry Amendment; codification and modification; comments due by 6-25-02; published 4-26-02 [FR 02-10094]
Foreign military sales customer involvement; comments due by 6-25-02; published 4-26-02 [FR 02-10093]
Purchases from required source; competition requirements; comments due by 6-25-02; published 4-26-02 [FR 02-10097]
Federal Acquisition Regulation (FAR):
Compensation cost principle; comments due by 6-24-02; published 4-23-02 [FR 02-09665]

DEFENSE DEPARTMENT
Engineers Corps
Natural disaster procedures; preparedness, response, and recovery activities; comments due by 6-28-02; published 4-25-02 [FR 02-10124]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Metal furniture surface coating operations; comments due by 6-24-02; published 4-24-02 [FR 02-07224]
Miscellaneous organic chemical and coating manufacturing; comments due by 6-28-02; published 5-1-02 [FR 02-10728]
Municipal solid waste landfills; comments due by 6-24-02; published 5-23-02 [FR 02-12845]
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 6-28-02; published 5-29-02 [FR 02-13112]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-24-02; published 5-23-02 [FR 02-12839]
Colorado; comments due by 6-24-02; published 5-23-02 [FR 02-12965]
Illinois; comments due by 6-28-02; published 5-29-02 [FR 02-13246]
Maryland; comments due by 6-27-02; published 5-28-02 [FR 02-13110]
Nebraska; comments due by 6-28-02; published 5-29-02 [FR 02-13248]
Pennsylvania; comments due by 6-24-02; published 5-23-02 [FR 02-12837]
Air quality planning purposes; designation of areas:
Alaska; comments due by 6-24-02; published 5-23-02 [FR 02-12966]
Hazardous waste:
Land disposal restrictions—
Chemical Waste Management, Inc., Kettleman City, CA; treatment variance; comments due by 6-27-02; published 5-28-02 [FR 02-13114]
Chemical Waste Management, Inc., Kettleman City, CA; treatment variance; comments due by 6-27-02; published 5-28-02 [FR 02-13115]
Solid wastes:
Hazardous oil-bearing secondary materials from petroleum refining industry and other materials processed in gasification system to produce synthesis gas; comments due by 6-24-02; published 3-25-02 [FR 02-07097]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; comments due by 6-25-02; published 4-24-02 [FR 02-10040]

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
California; comments due by 6-24-02; published 5-15-02 [FR 02-11980]
Georgia; comments due by 6-24-02; published 5-10-02 [FR 02-11672]
Michigan; comments due by 6-24-02; published 5-9-02 [FR 02-11606]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3448/P.L. 107–188

Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (June 12, 2002; 116 Stat. 594)

Last List June 12, 2002

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
*1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
*1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
*170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
*30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.